



# Federal Register

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**3-13-09**

**Vol. 74    No. 48**

**Friday**

**Mar. 13, 2009**

**Pages 10811-11000**



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**WHEN:** Tuesday, March 17, 2009  
9:00 a.m.–12:30 p.m.

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 63

RIN 3150-AH68

[NRC-2005-0011]

### Implementation of a Dose Standard After 10,000 Years

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. The final rule implements the U.S. Environmental Protection Agency's (EPA's) revised standards for doses that could occur after 10,000 years, but within the period of geologic stability. The final rule also specifies a range of values for the deep percolation rate to be used to represent climate change after 10,000 years, as called for by EPA, and specifies that calculations of radiation doses for workers use the same weighting factors that EPA is using for calculating individual doses to members of the public.

**DATES:** *Effective Date:* This final rule is effective on April 13, 2009.

**ADDRESSES:** Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents and information on this rulemaking can be accessed at the Federal rulemaking portal, <http://regulations.gov> by searching on rulemaking docket ID: NRC-2005-0011.

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## I. Background

On November 2, 2001 (66 FR 55732), NRC published its final rule, 10 CFR Part 63, governing disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada. The U.S. Department of Energy (DOE) must comply with these regulations for NRC to authorize construction and license operation of a potential repository at Yucca Mountain. As mandated by the Energy Policy Act of 1992 (EnPA), Public Law 102-486, NRC's final rule was consistent with the radiation protection standards issued by EPA at 40 CFR Part 197 (66 FR 32074; June 13, 2001). EPA developed these standards pursuant to Congress' direction, in Section 801 of EnPA, to issue public health and safety standards for protection of the public from releases of radioactive materials stored or disposed of in a potential repository at the Yucca Mountain site. Such standards were to be "based upon and consistent with" the findings and recommendations of the National Academy of Sciences (NAS). The NAS issued its findings and recommendations, on August 1, 1995, in a report entitled *Technical Bases for Yucca Mountain Standards*.

The State of Nevada and other petitioners challenged both the EPA standards and the NRC regulations in court. On July 9, 2004, the United States Court of Appeals for the District of Columbia Circuit upheld both EPA's standards and NRC's regulations on all but one of the issues raised by the petitioners. See *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251 (DC Cir. 2004) (*NEI v. EPA*). The court disagreed with EPA's decision to adopt a 10,000-year period for compliance with the standards and NRC's adoption of that 10,000-year compliance period in NRC's implementing regulations. The court found that EPA's 10,000-year compliance period was not "based upon and consistent with" NAS' findings, as required by Section 801 of EnPA. See 373 F.3d at 1270. The NAS recommended EPA develop standards that provide protection when radiation doses reach their peak, within the limits imposed by long-term stability of the geologic environment. In addition, NAS found no scientific basis for limiting application of the individual-risk standard to 10,000 years. Thus, the



court vacated EPA's rule, at 40 CFR Part 197, to the extent that it specified a 10,000-year compliance period, and remanded the matter to EPA. The court also vacated NRC's rule, at 10 CFR Part 63, insofar as it incorporated EPA's 10,000-year compliance period.

#### *EPA's Proposed Rule*

In response to the remand, EPA proposed revisions (70 FR 49014; August 22, 2005) to elements of its standards affected by the court's decision. EPA proposed to revise its individual-protection and human-intrusion standards to incorporate the time of peak dose into the determination of compliance. EPA retained its 0.15 millisievert (mSv)/year [15 millirem (mrem)/year] standards for 10,000 years after disposal, and added a 3.5 mSv (350 mrem) standard for the period after 10,000 years, but within the period of geologic stability. EPA defined the period of geologic stability as ending at 1 million years after disposal. Further, EPA proposed that NRC base its determination of compliance with the post-10,000 year standards, based on the median of the projected doses from DOE's performance assessments, rather than on the arithmetic mean of the projected doses. The arithmetic mean was still retained as the compliance measure for the first 10,000 years after disposal.

EPA also proposed to define how DOE should incorporate features, events, and processes (FEPs) in the performance assessment for the period after 10,000 years. EPA explained that the goal of the performance assessment "is to design an assessment that is a reasonable test of the disposal system under a range of conditions that represents the expected case, as well as relatively less likely (but not wholly speculative) scenarios with potentially significant consequences. The challenge is to define the parameters of the assessment so that they demonstrate whether or not the disposal system is resilient and safe in response to meaningful disruptions, while avoiding extremely speculative (and in some cases, fantastical) events." (70 FR 49048; August 22, 2005). EPA proposed that DOE's performance assessments conducted to show compliance with the post-10,000 year individual protection and human-intrusion standards shall project the continued effects of the FEPs included in the initial 10,000 year analysis. EPA also proposed certain constraints on DOE's performance assessments for the post-10,000 year period. These are:

(1) Seismic analysis may be limited to the effects caused by damage to the

drifts in the repository and the failure of the waste packages;

(2) Igneous analysis may be limited to the effects of a volcanic activity event directly intersecting the repository, and the igneous event may be limited to that causing damage to the waste packages directly, causing releases of radionuclides to the biosphere, atmosphere, or ground water;

(3) Climate change analysis may be limited to the effects of increased water flow through the repository as a result of climate change, and that the nature and degree of climate change may be represented by sampling within a range of specified constant conditions; and

(4) DOE must assess the effects of general corrosion on engineered barriers and may use a constant representative corrosion rate throughout the period of geologic stability, or a distribution of corrosion rates correlated to other repository parameters.

With respect to climate change, EPA further proposed that NRC shall specify in regulation the values to be used to represent climate change, such as temperature, precipitation, or infiltration rate of water.

Finally, in its definition of "effective dose equivalent" EPA proposed that DOE calculate annual committed effective dose equivalents using the weighting factors that would be incorporated in its regulations in a new Appendix A to 40 CFR Part 197. EPA believes this reflects the most recent application of current radiation science to the calculation of dose.

#### *NRC's Proposed Rule*

Under the EnPA, NRC's regulations must be consistent with EPA's standards. On September 8, 2005, NRC proposed revisions to its regulations designed to achieve consistency with EPA's proposed revised standards (70 FR 53313; September 8, 2005). NRC proposed to incorporate the new post-10,000 year dose limit of 3.5 mSv/year (350 mrem/year) and statistical measure for compliance directly into its regulations for individual protection and human intrusion. Also, NRC proposed to adopt specific constraints EPA proposed for considering FEPs after 10,000 years. NRC proposed to revise its requirements to be consistent with EPA's proposal that the performance assessment for the first 10,000 years serve as the basis for projecting repository performance after 10,000 years. NRC, supporting the use of current dosimetry, proposed to adopt the specific weighting factors provided in Appendix A of 40 CFR Part 197. Overall, NRC's proposed changes to Part 63 adopted the same or approximately

the same wording as used by EPA in its proposed revisions to 40 CFR Part 197. Further, consistent with EPA's specification of dosimetry for calculating individual doses to members of the public, NRC proposed to revise its Part 63 regulations to allow DOE to use the same methods for calculating doses to workers during the operational period. Finally, in response to EPA's proposal, NRC proposed to specify, in its regulation, steady-state (constant-in-time) values that DOE should use to project the long-term impact of climate variation. NRC proposed that DOE represent future climate change in the performance assessment by sampling constant-in-time deep percolation rates from a log-uniform distribution, which varies between 13 and 64 millimeters (mm)/year [0.5 and 2.5 inches (in.)/year].

NRC's notice of proposed rulemaking invited comments on its proposal to implement EPA's proposed revisions to its standards, as well as on NRC's revisions for use of specific weighting factors for calculating worker doses, and on NRC's specification of values for climate change. NRC requested comments only on those provisions of Part 63 that NRC proposed to change and noted that its existing regulations were not affected by this rulemaking except insofar as NRC's proposed rule adopts more up-to-date dosimetry for dose calculations. NRC notified potential commenters that comments on EPA's revised standards should be directed to EPA. In response to requests from the public, NRC extended the comment period, originally ending on November 7, 2005, to December 7, 2005 (70 FR 67098; November 4, 2005).

## **II. Implementation of the Environmental Protection Agency's Final Standards for a Compliance Period Beyond 10,000 Years and Within the Period of Geologic Stability**

#### *EPA's Final Rule*

EPA published final "Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada," for the period after 10,000 years at 40 CFR Part 197 on October 15, 2008 (73 FR 61256). EPA has finalized its proposals relating to: consideration of FEPs in the post-10,000 year period, and use of specific weighting factors that reflect current methods of dosimetry and updated models for calculating individual exposures from radiation. EPA's final rule differs from its proposal in two respects: the dose limit and the consideration of seismic activity.

First, the EPA standards establish a 1.0 mSv/year (100 mrem/year) dose limit for the reasonably maximally exposed individual (RMEI) for the period after 10,000 years and within the period of geologic stability, rather than a 3.5 mSv/year (350 mrem/year) dose limit, as had been proposed. The EPA standards also provide that NRC base its determination of compliance with the post-10,000 year standards on the arithmetic mean of the projected doses, rather than on the median, as was proposed.

Second, EPA's standards now require that analyses of seismic activity consider water table rise under Yucca Mountain caused by seismic activity. The final standards specify that NRC may determine the magnitude of the water table rise to be used in the performance assessment for the period after 10,000 years or, if this magnitude is found to be insignificant, not require its consideration in performance assessment. Alternatively, NRC may require DOE to demonstrate the magnitude of the water table rise and its significance in terms of repository performance in its license application.

#### *NRC's Final Rule*

EnPA directs the Commission to modify its technical criteria to be consistent with EPA's standards for a geologic repository at the Yucca Mountain site. NRC's final rule achieves this consistency by incorporating the revised standards into its final revised 10 CFR Part 63 regulations as transparently as possible. A brief description of the Commission's implementation of EPA's standards follows:

(1) For the period after 10,000 years and within the period of geologic stability (up to 1 million years), NRC adopts EPA's 1.0 mSv/year (100 mrem/year) dose limit for the RMEI in both the individual protection standard at 10 CFR 63.311 and the human intrusion standard at 10 CFR 63.321.

(2) NRC adopts, in 10 CFR 63.303, EPA's specification of the arithmetic mean as the basis for determining compliance with the dose limit for the post-10,000-year period.

(3) NRC adopts, in 10 CFR 63.305 and 63.342, EPA's specific requirements for the performance assessment DOE must use to evaluate the behavior of the repository for the period after 10,000 years. The FEPs selected for use in the performance assessment for the first 10,000 years should also be used for projecting repository performance after 10,000 years. NRC adopts EPA's additional constraints for the inclusion of seismic activity, igneous activity,

climate change, and general corrosion in the performance assessment for the period of time after 10,000 years. The seismic analysis must include the magnitude of the water table rise and its significance on the results of the performance assessment unless NRC, through rulemaking, decides to specify the magnitude of the water table rise to be used in the performance assessment after 10,000 years or to not require its consideration.

(4) NRC adopts, in 10 CFR 63.102(o), EPA's specification of the weighting factors to be used for estimating potential radiation exposures for members of the public, which are provided in Appendix A of 40 CFR Part 197.

In addition to the changes made for consistency with EPA's standards, NRC proposed to add a definition for "weighting factor" and to amend § 63.111(a)(1) to allow DOE to use the weighting factors in Appendix A for calculating doses to workers. After consideration of the public comments, NRC chooses not to add the proposed definition for "weighting factor" to its regulations nor to amend § 63.111(a)(1). Instead, NRC is providing a discussion regarding implementation of total effective dose equivalent (TEDE). NRC is adding text at § 63.102(o) to clarify that the weighting factors specified in EPA's final standards should be used for dose calculations for workers and the public. Thus, TEDE calculations of potential radiation exposures to workers and the public are implemented consistently with a single set of weighting factors based on current dosimetry. The definition for TEDE is also revised to be consistent with NRC regulations at Part 20. This approach avoids the unnecessary complication and potential confusion that could result from the use of different definitions in Parts 20 and 63 and provides a single, clear statement on the proper implementation of TEDE in Part 63 thereby eliminating any need for further changes. (See response to comments under Use of Current Dosimetry, in this document.)

EPA's rule requires DOE to assess the effects of climate change in the period after 10,000 years. This assessment is limited to the effects of increased water flow through the repository. The nature and degree of climate change may be represented by sampling within a range of constant climate conditions. EPA leaves it to NRC to specify, in regulation, the values to be used to represent climate change, such as temperature, precipitation, or infiltration of water. NRC's proposed rule sought public comment on its approach for representing the effect of

future climate in performance assessments after 10,000 years. NRC proposed that the constant value to be used to represent climate change is to be sampled from a log-uniform distribution for deep percolation rates, which varies between 13 and 64 mm/year (0.5 and 2.5 in./year).

After consideration of the public comments received on its proposal, NRC's final rule adopts its proposed approach with some modifications. NRC will require that DOE represent the effects of climate change by assuming constant-in-time climate conditions. The analysis may commence for the period beginning at 10,000 years after disposal and shall extend through the period of geologic stability. The constant-in-time value to be used to represent climate change is to be the spatial average of the deep percolation rate within the area bounded by the repository footprint. The constant-in-time deep percolation rates to be used now to represent climate change shall be sampled from a "truncated" lognormal distribution for deep percolation rates, which varies between 10 and 100 mm/year (0.39 and 3.9 in./year). This "truncated" lognormal distribution has an arithmetic mean of 37 mm/year (1.5 in./year) for the deep percolation rate as compared to an arithmetic mean of 32 mm/year (1.3 in./year) based on the range and distribution in the proposed regulations. (See response to comments under Climate Change, in this document for further details on this approach and the consideration of public comments.)

For a full description of changes NRC is incorporating into its Part 63 regulations, see Section IV of this document.

#### *Water Table Rise From Seismic Activity*

NRC currently requires DOE to demonstrate the magnitude of the water table rise from seismic activity and its significance in its license application. The National Research Council (1992) conducted a comprehensive technical evaluation of mechanisms that could raise the water table at Yucca Mountain (National Research Council, *Ground Water at Yucca Mountain: How High Can It Rise?*, National Academy Press, Washington, DC, 1992). The Council considered both the dynamic response of the water table to propagation of seismic waves, as well as the long-term hydrologic response of the ground water system to permanent changes in rock stress after the seismic waves pass. The Council concluded that transient effects are not relevant to the performance of a repository. Of potential significance, however, are permanent changes to the

fluid pore pressure or rock permeability that may bring about long-term changes in the height of the water table. The report's authors evaluated historical accounts of relevant large earthquakes that have caused long-term changes to the regional hydrologic regime of ground water systems. The authors conducted site-specific quantitative analyses of the potential change in the level of the water table. They concluded that "although the models are based on very limited data \* \* \* [the] stress/strain changes resulting from an earthquake are inadequate to cause more than a few tens of meters rise in the water table based on the convergence of the results by a variety of models and assumptions, especially if the deep carbonate aquifer is as incompressible as the limited data suggest." Whatever approach DOE takes when determining the magnitude of the water table rise from seismic activity, NRC expects that DOE will consider the information provided by the National Research Council as referenced in the National Academy of Sciences report entitled, "Technical Bases for Yucca Mountain Standards" (1995) at page 94 (*i.e.*, "Results indicate a probable maximum transient rise on the order of 20 m or less").

Although EPA standards specify that NRC may determine the magnitude of water table rise and its significance, NRC is not planning such action. If, in the future, NRC decides to specify the magnitude of the water table rise and whether it is significant enough for consideration in DOE's performance assessment, NRC will do so in a future rulemaking.

### III. Public Comments and Responses

The NRC received 16 individual comment submittals, many of which contained numerous specific comments. In addition, NRC received more than 3000 submissions objecting, in nearly identical text, to NRC's adoption of EPA's standards because the commenters believed the proposed standards are inadequate and because NRC published its proposed revision to Part 63 before EPA issued final standards. NRC carefully reviewed and considered the range of comments received during the public comment period. The NRC staff grouped the comments into the following five major topic areas:

- (1) NRC Adoption of EPA Standards;
- (2) Clarifications on NRC's Implementation of FEPs for the Performance Assessment for the Period after 10,000 Years;
- (3) Climate Change;
- (4) Use of Current Dosimetry; and

(5) Comments Beyond the Scope of this Rulemaking.

#### 1. NRC Adoption of EPA Standards

*Issue 1:* Must NRC supplement EPA's standards because they do not adequately protect public health and safety and the environment?

*Comment.* Some commenters supported NRC's adoption of EPA's standards, while others opposed adoption because they believe EPA's proposed standards are inadequate to protect public health and safety and the environment. The State of Nevada recognized that EnPA requires NRC's regulations to be consistent with EPA's standards but claims this does not mean the two must be identical. Rather, the State asserts, NRC must recognize that compliance with EPA's standards is necessary but not sufficient to provide adequate protection of public health and safety and the environment. The State also asserts that NRC should promulgate supplemental standards, in its regulations, that will provide the additional protection the State believes is needed. With respect to EPA's proposed standards, the State and other commenters particularly objected to EPA's 3.5 mSv/year (350 mrem/year) post-10,000 year standard and use of the median to assess compliance. The State and other commenters also objected to many other features of the EPA standards, including limitations on the FEPs, use of a two-tier standard, and defining the period of geologic stability as ending at 1 million years. In support of its comments, the State attached a copy of the comments on the EPA proposed standards it had submitted to EPA.

*Response.* While EnPA does not require NRC regulations to be identical to EPA's, EnPA does direct the Commission to modify its technical criteria to be consistent with EPA's standards for a geologic repository at the Yucca Mountain site. Thus, NRC is required to adopt EPA's post 10,000 year standard, and the NRC has done so. The NRC's notice of proposed rulemaking notified potential commenters that comments such as these on EPA's revised standards should be directed to EPA for EPA's response.

*Issue 2:* Should NRC extend the compliance period beyond 1 million years if it is determined that the peak dose may occur beyond the 1 million-year period?

*Comment.* The State commented that EPA's requirement that the post-10,000 year performance assessment should end at 1 million years is unnecessarily prescriptive. The State believes that if the trends in dose projection are not

clear or heading upward and geologic stability is maintained, extending the assessment beyond 1 million years may be required to establish the performance of the entire repository system. The State believes that NRC has the authority to consider not only the magnitude of the peak, but also the timing and overall trends of dose projections as it evaluates the license application.

*Response.* As explained in the response to the comment on Issue 1 under NRC Adoption of EPA Standards of this document, EnPA requires the Commission to modify its technical criteria to be consistent with EPA's standards for a geologic repository at the Yucca Mountain site. The NRC's notice of proposed rulemaking notified potential commenters that comments such as these on EPA's revised standards should be directed to EPA for EPA's response.

*Issue 3:* Has NRC illegitimately used rulemaking to resolve issues that must be resolved in an adjudicatory proceeding?

*Comment.* The State of Nevada commented that the proposed rule violates fundamental principles of administrative law because it fails to conform to the usual distinctions in agency administrative processes between "rulemaking" and "adjudication." This is because the rule includes what the commenter believes to be "determinations of adjudicative fact" that apply only to Yucca Mountain and that should be matters adjudicated in NRC's hearing on DOE's license application. According to the commenter, there are two critical distinctions between rulemaking and adjudication: "First, a rule addresses the future while an order [the product of adjudication] addresses the past or the present. Second, a rule is based on general policy considerations or on what are sometimes called legislative facts, generalizations about people and things, while an order is based on specific facts about things and individuals, sometimes called adjudicative facts." The commenter believes that the proposed rule violates this distinction because "[n]o agency may resolve a controversy over an adjudicative fact, relevant only to a single adjudication, by rulemaking." The State further asserts that NRC's alleged improper use of rulemaking to resolve adjudicatory factual issues constitutes an unlawful abrogation of Nevada's right, under section 189 of the Atomic Energy Act of 1954 as amended (AEA), to an NRC licensing hearing on these factual issues.

In the State's view, NRC cannot claim that it is permitted to resolve adjudicatory factual issues in its rulemaking simply because EPA did so and NRC must adopt EPA's standards. The commenter recognizes that the EnPA alters a straightforward demarcation between rulemaking and adjudication because "EnPA does contemplate Yucca 'rules' that by their nature depend on some facts relevant only to Yucca." However, the commenter contends that "EnPA authorized only those EPA findings of adjudicatory fact that (1) are based on what the [National] Academy [of Sciences] considered necessary to support an EPA rule; and (2) are essential to promulgate limits on radiation exposures, concentrations, or quantities beyond the boundary of the Yucca Mountain site." This is because the grant of authority to EPA in EnPA to issue standards applicable only to Yucca Mountain is based on the previous delegation of rulemaking authority to EPA in section 121 of the Nuclear Waste Policy Act of 1982 (NWPA), which, in turn, relies upon the delegation of authorities to EPA in Reorganization Plan Number 3 of 1970 that identifies what standards EPA may issue. The commenter believes that the EPA standards that NRC is adopting are rife with "adjudicative facts" and go well beyond the narrow limits permitted by EnPA.

The commenter cites eight "determinations of adjudicative fact" that appear in NRC's proposed rule, most of which NRC is adopting from EPA's standards:

(1) The performance assessment for the period after 10,000 years must use a time-independent log-uniform probability distribution for deep percolation rates of from 13 to 64 mm/year;

(2) Models and data used to develop FEPs ("features, events and processes") for the assessment period before 10,000 years are sufficient for the post-10,000-year assessment period;

(3) Seismic analyses for the post-10,000 year period may be based on seismic hazard curves developed for the pre-10,000-year period;

(4) Seismic effects in the post-10,000-year period may be limited to effects on the repository's drifts and waste packages;

(5) Igneous effects in the post-10,000 year period may be limited to effects on waste packages;

(6) The effects of climate change in the post-10,000-year period may be limited to increased water flux through the repository;

(7) Different types of corrosion of the waste packages must be considered in the pre-10,000-year period but only general corrosion at a constant rate may be considered in the post-10,000-year period;<sup>1</sup> and

(8) Effects of climate change in the post-10,000-year period may be expressed by steady state (time independent) values.

*Response.* The Commission disagrees with the comment. "It is a well-settled principle of administrative law that the decision whether to proceed by rulemaking or adjudication lies within the broad discretion of the agency. See, *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947)" *Wisconsin Gas Company v. Federal Energy Regulatory Commission*, 770 F.2d 1144, 1166 (DC Cir. 1985). The Commission has properly exercised its discretion to resolve the issues referenced by the commenter through rulemaking rather than through adjudication.

The commenter mischaracterizes as "determinations of adjudicative fact" what are in reality assumptions, derived from data, testing, and scientific analysis, that DOE is to use in its performance assessment to demonstrate compliance with regulatory standards. A performance assessment is used to take account of the considerable uncertainties inherent in projecting disposal system performance over times as long as 1 million years. The performance assessment is not intended to resolve issues arising in the past or present. Rather, it is intended to provide a reasonable test of the safety of the repository by modeling through computer simulations a large number of "alternative futures," incorporating the features, events, and processes required by the rule to be included in the assessment to determine if there is a reasonable expectation that the disposal system will meet regulatory standards. The assumptions identified by the commenter impose certain limitations on the scope of the performance assessments. These limitations are based on the application of scientific reasoning to data, testing, and analysis at hand on these issues and are for the purpose of enabling a reasonable test of repository safety.

NRC has made a policy judgment that rulemaking is the better procedural vehicle to use to determine how the performance assessments should be constructed and, in particular, what limitations are appropriate to avoid

<sup>1</sup> The rule does not, in fact, restrict consideration of corrosion in the post-10,000 year period to general corrosion; other types of corrosion, if important, will be carried over from the pre-10,000 year period and will also be considered.

unbounded speculation and to provide a reasonable test of repository safety. How this testing should be conducted is preeminently a matter of scientific and technical analysis. To the extent that there may be disagreement in the scientific community as to the scientific soundness of the assumptions and any limitations on assumptions to be incorporated into the performance assessments, the notice and comment rulemaking process is of particular value because it allows equal access to all viewpoints and best assures achievement of the ultimate goal of making sure that the testing of the safety of the repository rests on the best science available. The determination of what assumptions and limitations on assumptions are best suited to form a reasonable test is not aimed at determining the rights or liabilities of particular individuals and thus, the adjudicatory process is not conducive to selecting the ingredients of the tests used to provide a reasonable expectation of repository safety.

Because neither EPA nor NRC have made "determinations of adjudicative fact," as explained above, the question of the extent of EPA's authority under EnPA to establish standards through rulemaking that the commenter believes would otherwise be determinations of adjudicative fact does not arise. EPA has adequately addressed its jurisdiction to issue the standards that NRC is adopting in this final rule.

The commenter may also be asserting that all the issues in this rulemaking are adjudicatory issues simply because the rule applies to only one entity, DOE, and the licensing of a repository at one site. A "rule," as defined in the Administrative Procedure Act, "means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy" 5 U.S.C. 551(4) (emphasis added). Thus, the fact that NRC's rule applies only to DOE and only to DOE's activities at one site does not, per se, turn the issues considered in this rulemaking into adjudicative issues determining adjudicative facts (See *Attorney General's Manual on the Administrative Procedure Act*, 1947, p. 13 ("[R]ule" includes agency statements not only of general applicability but also those of particular applicability applying either to a class or to a single person"); *Anaconda Company v. Ruckelshaus*, 482 F.2d 1301, 1306 (10th Cir. 1973)).

The cases cited by the commenter, *Heckler v. Campbell*, 461 U.S. 458 (1983), *Broz v. Heckler*, 711 F.2d 957 (11th Cir. 1983) (*Broz II*), and *Opinion Modified on Denial of Rehearing by Broz*

*v. Heckler*, 721 F.2d 1297 (11th Cir. 1983) (*Broz III*), in support of its view that NRC may not make “determinations of adjudicatory fact” in a rulemaking are similarly not relevant because no such determinations are being made in the final rule. These cases do not establish the broad principle stated by the commenter; *i.e.*, that “[n]o agency may resolve a controversy over an adjudicative fact, relevant only to a single adjudication, by rulemaking.” In *Heckler v. Campbell*, the Supreme Court upheld the Secretary of Health and Human Service’s (HHS) reliance on rulemaking to establish guidance for the determination that jobs existed in the national economy within the capability of the disabled claimant against a claim that such a determination must be made in an individual adjudication. *Broz* considered the same guidance with respect to its application to the effect of age on disability determinations. Ultimately, in *Broz III*, the Eleventh Circuit of the U.S. Court of Appeals based its decision that this must be an individualized determination reached in an adjudication on its interpretation of Congress’ intent in amending the Social Security Act (SSA) rather than on more sweeping statements about an agency’s choice to use rulemaking or adjudication to achieve its mission.<sup>2</sup> Finally, the Commission does not agree that resolving the issues the commenter has labeled “determinations of adjudicative fact” deprives the State of its right to a hearing under section 189a. of the AEA on these issues. As the Supreme Court has stated, “the statutory requirement for a hearing \* \* \* does not preclude the Commission from particularizing statutory standards through the rulemaking process and barring at the threshold those who neither measure up to them nor show reasons why in the public interest the rule should be waived” (*Federal Power Commission v. Texaco, Inc.*, 377 U.S. 33, 39 (1964)).<sup>3</sup>

<sup>2</sup> The Eleventh Circuit initially construed the provisions of the SSA in terms of the distinction between adjudicative facts and legislative facts and concluded that the effect of age on disability was an adjudicative fact that could not be determined in a rulemaking. *Broz v. Schweiker*, 677 F.2d 1351 (11th Cir. 1982) (*Broz I*) *Certiorari Granted, Judgment Vacated by Heckler v. Broz*, 461 U.S. 952 (1983). Upon remand for reconsideration in light of *Campbell*, the Eleventh Circuit, in *Broz II*, reaffirmed its original decision upon finding that the Supreme Court had left open the validity of the guidance with respect to its use in determining the effect of age on disability.

<sup>3</sup> The commenter believes that the rules which resolve these issues will be incapable of actually being applied as written because they will turn out to be based on outdated scientific evidence. If this should happen, any person can petition to amend the rules. In addition, NRC’s procedural rules

The commenter also believes that, as explained in its comments to EPA, EPA’s “findings of adjudicative fact,” in its final rule, now being adopted in NRC’s final rule, are without any technical basis and are contrary to sound science, and for that reason violate both EnPA and the AEA. The NRC’s notice of proposed rulemaking notified potential commenters that comments such as these on EPA’s revised standards should be directed to EPA for EPA’s response.

*Issue 4:* Should NRC have waited to propose its regulations until after EPA had finalized its standards?

*Comment.* A number of commenters objected to the process NRC used to conduct this rulemaking, namely issuing a proposed rule adopting EPA’s proposed standards before EPA issued its final standards. Commenters expressed the view that NRC conveyed the impression that EPA’s proposed standards would be adopted in NRC’s final rule, such that public comment on EPA’s proposal would have no effect; that if NRC cared what potential commenters thought about EPA’s proposal, it should have waited, considered the comments received by EPA, and developed NRC’s rule based on EPA’s final rule; that having the public comment period for both rules at the same time is confusing for concerned citizens and makes it difficult for them to comment on the NRC rule; and that NRC should provide an additional comment period on its rule if EPA’s final rule departs substantially from its proposed rule.

*Response.* NRC’s process for conducting this rulemaking was intended to put in place revised regulations, consistent with EPA’s final revised standards, because the court had vacated NRC’s rule insofar as it incorporated EPA’s 10,000 year compliance period. NRC also sought to inform potential commenters on both rules, of how NRC envisioned implementing the EPA’s proposed standards. It was hoped that such information would be of value in developing comments on both proposals. NRC’s intention has always been, consistent with its statutory obligations, to conform its final regulations to the final standards EPA would issue after EPA duly considers the comments it received.

NRC emphasized in its notice of proposed rulemaking that comments on EPA’s revised standards were to be

enable a party to an adjudicatory proceeding to petition that application of a rule be waived in circumstances when the rule would not serve the purposes for which it was adopted. See, 10 CFR 2.335(b).

addressed to EPA and that the scope of NRC’s revised rule was limited to its adoption of EPA’s revised standards, its proposal to allow DOE to use the same methods for calculating doses to workers during the operational period as those required for calculating public doses and its proposal to specify use of a deep percolation rate to represent the effect of future climate in performance assessments after 10,000 years. Thus, the narrow focus of NRC’s rulemaking only required potential commenters to focus on two technical issues beyond the issues involved in EPA’s proposal (*i.e.*, setting a value for the deep percolation rate and use of modern dosimetry for estimating worker exposures). NRC extended the comment period by one month in response to public comments. For these reasons, we believe the public was given a fair opportunity to comment on NRC’s proposal. NRC regrets any misimpression that NRC was assuming that EPA’s proposed rule would become final as proposed without modification and that comments provided to EPA would have no effect. NRC made no such assumption and EPA has in fact made changes to its proposed rule in light of the comments it received.

Finally, with respect to the request for an additional comment period if EPA’s final rule is substantially different from its proposed rule, as stated above (*see* Background section of this document), EPA’s final rule differs from its proposed rule in only two respects: the dose limit is set to 1.0 mSv/year (100 mrem/year) with the arithmetic mean as the statistical metric to be used to assess compliance; and its requirement that NRC either establish the magnitude of the water table rise and its significance as part of the seismic assessment, or require DOE to do this assessment. The first change responds favorably to the numerous public comments urging use of a dose limit lower than 3.5 mSv/year (350 mrem/year) and use of the arithmetic mean as the measure of compliance. Similarly, in its final regulations, NRC requires DOE to include the magnitude of the water table rise and its significance in its seismic assessment submitted with the license application. As a result, this information would also be subject to litigation, absent any future NRC rulemaking on this subject. Because of these changes, the Commission believes there is no need for an additional comment period.

*2. Clarification of NRC's Implementation of FEPs for the Performance Assessment for the Period After 10,000 Years*

*Issue 1:* Are the FEPs considered for the first 10,000 years after repository closure the *only* FEPs that need be considered for the entire post-closure period?

*Comment.* The Nuclear Energy Institute (NEI) agreed with NRC's adoption of EPA's requirement that the same FEPs identified and screened for inclusion in performance assessments to show compliance with the standards for the initial 10,000 years after closure be used in performance assessments to show compliance with the post-10,000 year standards. However, NEI believes NRC should clarify that FEPs that are screened-in for the first 10,000 years after repository closure are the *only* FEPs that need be considered for the entire post-closure period. NEI provided the example that if DOE provides an adequate basis to screen-out post-closure criticality or microbially-influenced corrosion (MIC) effects during the first 10,000 years after repository closure, the Yucca Mountain Review Plan (YMRP) should specify that no additional consideration of criticality or MIC in the post-10,000 year period is necessary.

*Response.* The requirements for FEPs to be included in the performance assessment for the period after 10,000 years are specified at § 63.342. DOE is required to include those FEPs that are screened into the performance assessments for the first 10,000 years after repository closure *and* the four FEPs specifically identified for inclusion, *i.e.*, seismicity, igneous activity, climate change, and general corrosion. Based on the requirements at § 63.342, the specific FEPs (criticality or MIC) identified by the commenter would only be included in the performance assessment after 10,000 years if they were also included in the performance assessment for the first 10,000 years (*i.e.*, could not be screened out of the performance assessment for the first 10,000 years). The Commission does not believe further clarification to the regulation is necessary.

*Issue 2:* Do the proposed changes to § 63.114 "Requirements for performance assessment" impose additional limits on the performance assessment for the period after 10,000 years?

*Comment.* The State of Nevada believes that § 63.114(b) appears to include another limit beyond the limits in § 63.342(c) on the post-10,000 year performance assessment and asks for clarification. NEI believes that NRC

should more clearly assert that performance assessment methods meeting existing Part 63 requirements are also adequate for the post-10,000 year period.

*Response.* The changes to § 63.114 impose no additional limits on the performance assessment for the period after 10,000 years. The changes ensure consistency between NRC's regulations and EPA's final standards. In particular, EPA's final standards specify that FEPs used for the first 10,000 years should be used for estimating performance after 10,000 years. Thus, § 63.114(b) specifies that the same performance assessment methods used for the first 10,000 years are to be used for the period after 10,000 years. For example, parameter ranges used in the performance assessment for the first 10,000 years would be used in the performance assessment for the period after 10,000 years. Additional technical basis for selection of FEPs, beyond that developed for the performance assessment for the first 10,000 years, is not required. Thus, the changes at § 63.114 ensure the performance assessment methods, such as the support and treatment of FEPs will be the same for the periods before and after 10,000 years, subject to the limits on performance assessments at § 63.342. Some minor revisions have been made to § 63.114(b) to further clarify the Commission's intent.

*Issue 3:* Does the proposed treatment of a potential igneous event during the period after 10,000 years limit consideration of the effects of magma on spent fuel?

*Comment.* The State of Nevada commented that the proposed regulation at § 63.342(c)(1)(ii) specifies that the effects of an igneous event are limited to the effects of damage directly to the waste package. The State is concerned that NRC will not consider the effects of magma on the radioactive waste inside the waste package. The State asserts that effects on the contents of the waste package could be important for igneous events that occur at times after waste packages are already breached because of other processes (such as corrosion) and the radioactive waste may be more vulnerable to igneous events.

*Response.* The regulations do not exclude consideration of the spent fuel in the treatment of a potential igneous event during the period after 10,000 years. The rule, at § 63.342(c)(1)(ii), requires the igneous analysis to include damage to the waste package directly. *Waste package* is defined in § 63.2 to mean "the waste form and any containers, shielding, packing, and other absorbent materials immediately surrounding an individual waste

container" and *waste form* is defined in the same section to mean "the radioactive waste materials and any encapsulating or stabilizing matrix." Thus, consideration of damage to the waste package would include consideration of damage to the radioactive waste materials inside the waste package.

*Issue 4:* Should the seismic analysis exclude seismic activity from magma movement?

*Comment.* NEI agreed with NRC's proposal to limit analysis of long-term effects of seismicity to effects on the drifts in the repository and the waste package but requested that NRC clarify that seismic activity from magma movement need not be considered in the analysis. NEI suggests such a limitation is appropriate based on an Electric Power Research Institute (EPRI) analysis that demonstrates that seismic activity induced from magma movement is very minor, compared to seismic activity caused by tectonism.

*Response.* Seismic activity includes activity from both tectonism and magma movement. Current methods to develop and quantify seismic ground motions, such as DOE's current Probabilistic Seismic Hazard Assessment, include consideration of seismic activity from volcanism or magma movement. Volcanic sources of seismic activity are often included as part of the background seismic source term. Therefore, the commenter's request for clarification, which would exclude seismic activity caused by magma movement from the seismic analysis, is not appropriate.

*Issue 5:* Should NRC's rule set a requirement for assuring the statistical significance of DOE's modeling results in its performance assessments?

*Comment.* The State of Nevada stated that NRC's rule should establish a requirement for DOE to prove mathematically that its modeling results are statistically significant (*i.e.*, a sufficient number of "runs" or the set of probabilistic simulations used to simulate the wide range of possible future behaviors of the repository system have been performed).

*Response.* The current regulations provide specific requirements at § 63.114 for the performance assessment. Among these, for example, are proper consideration of uncertainty and variability in parameter values. The Commission believes it is neither necessary nor appropriate to further specify measures of statistical significance. Fundamental to any approach for representing uncertainty and variability is demonstrating how the results accurately represent the uncertainty and variability, for example,

by performing a sufficient number of probabilistic simulations. Determining what number of "runs is sufficient" is best left for DOE to present and defend, based on the approach used in the performance assessment and an understanding of the results. NRC is confident that its regulations for performance assessment require DOE to provide sufficient information for NRC to judge if DOE has performed enough probabilistic simulations.

*Issue 6:* Will FEPs associated with atmospheric releases of radioactivity and exposure of residents downwind of Yucca Mountain be considered in the performance assessment for the period after 10,000 years?

*Comment.* Two commenters expressed concern over how FEPs associated with atmospheric releases of radioactivity and exposure of residents downwind of Yucca Mountain will be considered in the performance assessment for the period after 10,000 years, including FEPs associated with seismic and igneous FEPs.

*Response.* The performance assessment for the period after 10,000 years must include consideration of potential atmospheric releases of radioactivity. The NAS report, *Technical Bases for Yucca Mountain Standards* (1995), pp. 6–7, recommended that the exposure scenario be specified in the standards because of the difficulties in projecting where people may reside and how exposures might occur in the distant future (e.g., thousands to hundreds of thousands of years in the future and longer). Accordingly, EPA specified characteristics of the RMEI (66–FR 32134; June 13, 2001).

*Issue 7:* Does the fact that the limitations on FEPs in the performance assessments are being established through rulemaking rather than adjudication, based on data available in 2005, mean that there will be no flexibility to take into account data and models used in DOE's license application or that DOE will have no incentive to further reduce uncertainties?

*Comment.* The State of Nevada believes that the assumptions being used to account for uncertainty in the post-10,000 year period, and which are incorporated through this rulemaking into the limitations on the FEPs to be considered in DOE's performance assessments, are premature and render the rule inflexible because they are based on data available in 2005. NRC's rules must be sufficiently flexible to take into account data and models used in DOE's license application. The State fears that because the rules are premised

on uncertainties as perceived through 2005 data and models, DOE will have a disincentive to reduce these uncertainties and add realism to its post-10,000 year performance assessment because it will wish to preserve the uncertainties and conservatism that form the basis for the rules.

*Response.* NRC's regulations afford DOE the flexibility to account for uncertainty in data and models. Such flexibility provides neither incentive nor disincentive to reduce uncertainties. The regulations, at § 63.114, require DOE to account for the uncertainties in data and models in the performance assessment over the initial 10,000 years, and these same uncertainties are to be included in the performance assessment beyond 10,000 years. On June 3, 2008, DOE submitted a license application to NRC for authorization to construct a repository at Yucca Mountain. The NRC will review DOE's treatment of the uncertainties. DOE has the flexibility to decide where to reduce uncertainties; however, it must demonstrate there is a reasonable expectation that the performance objectives will be met. NRC regulations afford DOE appropriate flexibility for selecting and supporting its performance assessment, including the consideration of uncertainties, given the unique and difficult task of estimating performance of a geologic repository over thousands of years.

The regulations do provide certain limitations, as specified in EPA's final standards, with respect to certain FEPs (i.e., seismicity, igneous activity, climate change, and general corrosion). Uncertainties in data and models for these FEPs are limited to those aspects of the FEPs considered most important to performance and the treatment of the uncertainties used in the performance assessment for the initial 10,000 years (see also the response to Issue 2 under this topic). For example, the consideration of seismic events in the performance assessment for the period after 10,000 years would be based on the same seismic hazard curve, including its uncertainties, that was used in the performance assessment for the initial 10,000 years. However, the analysis for the period after 10,000 years would only consider the aspects of the seismic events that might be the most important to repository performance (i.e., damage to the drifts in the repository, failure of the waste package, and magnitude of the water table rise under Yucca Mountain).

Finally, the commenter believes that the rules which resolve these issues will be incapable of actually being applied as written because they will turn out to be based on outdated scientific evidence. If

this should happen, any person can petition to amend the rules. In addition, NRC's procedural rules enable a party to an adjudicatory proceeding to petition that application of a rule be waived in circumstances when the rule would not serve the purposes for which it was adopted (See, 10 CFR 2.335(b)).

### 3. Climate Change

*Issue 1:* Can the future climatic regime be bounded by the observed range of conditions over past glacial-interglacial cycles?

*Comment.* One commenter indicated it is incorrect to presume that future climate conditions at Yucca Mountain can be bounded by the observed range of conditions over past glacial-interglacial cycles. To the extent this comment may refer to human-induced influences on climate, those influences are considered under a separate issue.

*Response.* The Commission believes the future climatic regime can be bounded by the observed range of conditions over past glacial-interglacial cycles. All climate predictions are based on and calibrated to evidence of past climates contained in the geologic record. The values specified for deep percolation rates adopted in the final regulation capture the range of temporal variability, uncertainty, and magnitude of deep percolation expected as a consequence of future climate change.

The NAS committee (1995) was familiar with the science behind predicting future climate changes and stated, in its recommendations on Yucca Mountain standards, that a future ice age in the next few hundred years is "unlikely but not impossible," in the next 10,000 years is "probable but not assured." However, over a 1-million-year time frame, the climate is much more likely to pass through several glacial-interglacial cycles (i.e., ice ages). The NAS indicated there is a reasonable data base from which to infer past changes and noted that "(a)lthough the range of climatic conditions has been wide, paleoclimate research shows that the bounding conditions, the envelope encompassing the total climatic range have been fairly stable" and that "(b)ased on this record, it seems plausible that the climate will fluctuate between glacial and interglacial stages during the period suggested for the performance assessment calculations." Further, in its 1995 findings, the NAS stated that "enough of the important aspects [of climate change] can be known within reasonable limits of uncertainty, and these properties and processes are sufficiently understood and stable over the long time scales of interest to make calculations possible



and meaningful, we believe that there is a substantial scientific basis for making such calculations, taking uncertainty and natural variability into account.”

*Issue 2:* Should human-induced influences on climate be considered when bounding the future climatic regime?

*Comment.* One commenter noted that human-induced (*i.e.*, anthropogenic) influences on climate from fossil fuel combustion and the resulting persistence of greenhouse gases in the atmosphere are the main issues to consider in predicting future climatic conditions. These anthropogenic effects might cause substantial reorganization of atmospheric systems, both before and after 10,000 years, that increase the number and intensity of extreme storm events at Yucca Mountain. The commenter believed that the highly non-linear hydrologic response of an arid system like Yucca Mountain to such extreme events would affect the performance of the repository and invalidate the use of the long-term average climate proposed in the Part 63 revisions. The same commenter also noted that the predictive challenges of simulating these postulated extreme events could be met through use of existing and soon-to-be-available global circulation models (GCMs) that explicitly incorporate atmospheric composition and evolution in predicting future climate conditions. In presuming use of these models, this commenter noted that uncertainties in climate prediction do not change in the period beyond 10,000 years, at least in terms of the range of climate conditions that could occur, but rather that their detailed timing may change. Another commenter speculated that the same anthropogenic climate effects might delay the onset and reduce the magnitude of full glacial cycles, resulting in longer interglacial periods that would be warmer and drier than present-day conditions. Accordingly, this second commenter felt that the use of long-term average climate conditions represented by the values specified for deep percolation rates in the proposed Part 63 revisions was overly conservative and that less water would reach the repository horizon.

*Response.* NRC considered the effects of anthropogenic influences on climate change. Based on that evaluation, the NRC believes the range of values specified for deep percolation rates adopted in the final rule captures the range of temporal variability, uncertainty, and magnitude of deep percolation expected as a consequence of future climate change.

The magnitude and timing of the anthropogenic effects suggested by the commenter are likely to be more pronounced during the first 10,000 years. The final regulation addresses only the 10,000 to 1 million year time period, during which any anthropogenic effects are anticipated to diminish. Anthropogenic effects, as represented in the GCMs cited by the commenter, might persist for 100,000 year time periods, but they do not fluctuate periodically and they decrease with time after an initial peak. Therefore, NRC believes that these effects can be captured by the long-term average infiltration values adopted in the final regulation because the range of values for the sampled population bounds these effects in an appropriately conservative manner.

Atmospheric reorganization and increased frequency and magnitude of extreme events might result from natural or anthropogenic climate change. However, extreme 10-to 20-year events effectively become long-term averages that are incorporated into the range specified for deep percolation in the final regulation, when simulating a time period of 1 million years.

The Paintbrush non-welded tuff unit (PTn unit) overlying the potential repository dampens the effects of transient phenomena associated with shorter time frames (Manepally, C., *et al.*, “The Nature of Flow in the Faulted and Fractured Paintbrush Nonwelded Hydrogeologic Unit,” San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, April 2007) in the system’s response to external hydrologic events. The NAS also recognized that long-term net infiltration averages can bound and describe Yucca Mountain hydrology adequately, stating that “the subsurface location of the repository would provide a temporal filter for climate change effects on hydrologic processes” The commenter also acknowledged this, quoting Cohen, “no evidence shows that high-frequency fluctuations (a few years or shorter) penetrate to the depth of the potential repository” (Cohen, S., “Assumptions, Conservatism, and Uncertainties in Yucca Mountain Performance Assessments,” S. Cohen & Associates, prepared for U.S. Environmental Protection Agency, August 8, 2005). Flow simulations have shown that the non-welded PTn rock unit effectively damps out decadal flow transients. Also, as the first commenter notes, ‘frequent events’ are mitigated by evapotranspiration. If high-precipitation events occur more frequently, the concomitant increases in soil formation and vegetation likely will mitigate the potential for increased infiltration,

because net infiltration correlates inversely with soil thickness and extent of vegetative cover. Given the expected ratios of infiltration to precipitation, infiltration estimates of 15 to 60 mm (0.6 to 2.4 in.) per event would result if all precipitation were to infiltrate. In reality, a substantial fraction of such high precipitation will run off or evapotranspire. Accordingly, long-term deep percolation as specified in the proposed rule captures these events in an appropriately conservative manner.

The points raised by the second commenter illustrate the divergence of scientific opinions about the nature and magnitude of natural and anthropogenically influenced climate change, particularly at the sub-regional scale necessary for net infiltration predictions at Yucca Mountain. The natural and anthropogenic effects associated with climate change are uncertain at this scale. Predictions will vary in timing, frequency, and magnitude of climatic variables such as temperature and precipitation, and therefore, net infiltration and deep percolation. The first commenter notes that climate change might result in wetter conditions resulting in insufficiently conservative predictions; the second commenter is concerned that conditions at Yucca Mountain might be drier in the future, resulting in overly conservative predictions. The first commenter refers to Cohen (2005) with respect to certain aspects of this issue; however, Cohen (2005) also notes that “(a)nthropogenic climate changes could reduce possibility of future glacial climates, lowering long-term infiltration rates and reducing dose.”

In conclusion, the range of uncertainty and variability in predictions of future climate, including that associated with anthropogenic changes, and the resulting deep percolation are captured by the range of values specified in the final regulation.

*Issue 3:* Is the nature and extent of the future climatic regime reasonably represented by the stylized scenario where constant climate conditions take effect after 10,000 years and continue through the time of geologic stability?

*Comment.* Some commenters were concerned about the proposed future climate scenario, in which the future climate is represented by constant-in-time conditions that take effect after 10,000 years and continue through the time of geologic stability. The commenter’s general concern is that assuming constant conditions may underestimate the hydrologic response at Yucca Mountain by failing to consider explicitly either variable dry and wet periods or changes in soils,



vegetation, and the watershed geomorphic characteristics in performance assessments over the time of geologic stability. Specifically, one commenter states that using constant-in-time infiltration rates is non-conservative because a performance assessment conducted with this assumption would underestimate doses to the RMEI. The stated basis for this conclusion is that transient changes from dry to wet conditions in the repository cause greater radionuclide releases because localized corrosion of the waste packages is more likely under drier conditions. Also the exposed waste form is more likely to be dissolved and radionuclides are more apt to be transported to the biosphere under subsequent wet conditions.

*Response.* The range and distribution of deep percolation rates adopted in the final regulations appropriately reflect the uncertainty in the area-averaged water flux through the footprint of the potential repository during the period after 10,000 years and are a reasonable basis for estimating and evaluating the long-term safety of the repository.

The range and distribution of deep percolation rates adopted in the final regulation are not, in fact, based on constant climate conditions. The technical bases for the deep percolation range subsume time-variant climate conditions, whose future periodicity and magnitude are based on and calibrated to the range of conditions preserved in the geologic record, which includes geomorphic changes. In addition, the hydrogeologic properties of the PTn unit overlying the repository horizon, where present, dampen the magnitude of short term fluctuations in deep percolation that might be associated with future climate change or variability in precipitation (Manepally, C., *et al.*, "The Nature of Flow in the Faulted and Fractured Paintbrush Nonwelded Hydrogeologic Unit," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, April 2007). NAS acknowledges the phenomenon by indicating that "(t)he subsurface location of the repository would provide a temporal filter for climate change affects on hydrologic responses. For this reason, climate changes lasting on the order of hundreds of years would have little, if any, effect on repository performance."

The commenter's argument that doses to the RMEI would be underestimated appears to be based on results from preliminary performance assessments conducted by DOE in which localized corrosion is the predominant mode of waste package failure. Preliminary waste package models developed by

DOE indicate that the Alloy 22 outer container is susceptible to localized corrosion predominantly during the first few thousands of years, when waste package temperatures are high and concentrated solutions could develop. At times beyond 10,000 years, when waste package temperatures are lower, the relative humidity within the emplacement drift is high, and solutions are less concentrated; the waste package is less susceptible to localized corrosion. Because general corrosion appears to be the dominant mode of waste package failure after 10,000 years, precise modeling of transient changes from drier to wetter conditions is unlikely to have a pronounced effect on peak expected dose.

The commenter's argument does not appear to consider 10 CFR 63.303, which states that "compliance is based upon the mean of the distribution of projected doses of DOE's performance assessments." The 1995 NAS document at page 77 concluded that "[a]lthough the typical nature of past climate change is well known, it is obviously impossible to predict in detail either the nature or the timing of future climate change." Although the science of climatology has advanced significantly in the 15 years after the publication of the NAS report, predicting the timing of dry-to-wet transitions remains highly uncertain. Even if it were true that "[p]eak dose is likely to occur when a wet period follows a long period of unusually dry conditions" as indicated by the commenter, dry-to-wet transients in performance assessments would have less influence on the mean of the distribution of projected doses than on any single projected dose used to construct the distribution. Specifically, simulations done by the NRC using its performance assessment code (TPA Version 4.1j) exhibited similar repository performance, in terms of dose, under constant and non-constant climate scenarios ("Regulatory Perspective on Implementation of a Dose Standard for a One-Million Year Compliance Period," T. McCartin, Proceedings of the 2006 Materials Research Society Fall Meeting, Volume 985 from the Materials Research Society Proceedings Series). In these simulations, the non-constant climate scenarios were developed using cyclic variations caused by orbital parameters. Also, the constant climate scenarios used deep percolation values specified in NRC's proposed regulations. Performance assessment models and analyses continue to improve; however, dry-to-wet conditions appear to have a limited effect on the mean dose within

the constraints of current performance assessment approaches.

*Issue 4:* What is the range of future mean annual precipitation rates used to estimate future mean annual deep percolation rates?

*Comment.* The State of Nevada commented that the upper bound of the future precipitation rate stated in the discussion section preceding the proposed regulation is lower than that used by DOE. DOE commented that the precipitation rates discussed in the proposed regulation do not represent the full range of expected climates. The Advisory Committee on Nuclear Waste suggested including additional documentation in the final rule for the approach used to calculate average precipitation rates over the post-10,000 year period.

*Response.* NRC has conducted detailed climate analyses that considered time-varying values of historic, inferred prehistoric, and potential future precipitation rates to support the range of long-term-average future deep percolation rates adopted in the final regulations. These time-varying precipitation rates were also used to estimate the range and bounds of 1-million-year-average annual precipitation. Having considered the comments and conducted further analyses, the Commission believes the time-varying precipitation rates used to estimate future mean annual deep percolation rates are appropriate.

The lowest and highest values of the 1-million-year-average future annual precipitation in any climate sequence used to estimate the 1-million-year-average future deep percolation rate are 211 and 471 mm/year (8.3 and 18.5 in./year) at a 1,524 meter (5,000 foot) reference elevation. NRC used two approaches, which are described by Stothoff and Walter, "Long-Term Average Infiltration at Yucca Mountain, Nevada: Million-Year Estimates," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses (2007), to estimate time-varying sequences of mean annual precipitation that vary over glacial cycles. Both approaches estimate precipitation for glacial stages, with the sequence of glacial stages determined using well-known orbital dynamics relationships. The first approach is based on the climate reconstruction by Sharpe, "Future Climate Analysis: 10,000 Years to 1,000,000 Years After Present," Reno, NV: Desert Research Institute (2003), with present-day and monsoon climatic conditions adjusted to reflect historical precipitation measurements in the vicinity of Yucca Mountain based on meteorological data in Bechtel SAIC Company (BSC),

“Simulation of Net Infiltration for Present-Day and Potential Future Climates,” Las Vegas, NV: Bechtel SAIC Company, LLC (2004). The 1-million-year-average mean annual precipitation rate from the first approach ranges from 213 to 389 mm/year (8.4 to 15.3 in./year), and with a mean of 315 mm/year (12.4 in./year) and a standard deviation of 52 mm/year (2.0 in./year). The second approach is based on estimated sequences of future continental ice volumes, which respond to insolation variation caused by orbital dynamics, with changes in precipitation related to changes in atmospheric patterns occurring from changes in continental ice volume. The 1-million-year-average mean annual precipitation for the second approach ranges from 211 to 471 mm/year (8.3 to 18.5 in./year), and with a mean of 322 mm/year (12.7 in./year) and a standard deviation of 47 mm/year (1.8 in./year).

Both approaches described by Stothoff and Walter, “Long-Term Average Infiltration at Yucca Mountain, Nevada: Million-Year Estimates,” San Antonio, TX: Center for Nuclear Waste Regulatory Analyses (2007) subdivide the 1-million-year period into a sequence of interglacial and glacial stages that vary in duration from 500 to 40,000 years. For each stage, a range of mean annual precipitation is estimated that includes uncertainty. The smallest and largest values of estimated mean annual precipitation considered in any stage are 162 and 581 mm/year (6.4 and 22.9 in./year).

*Issue 5:* What is the range of future deep percolation rates?

*Comment.* A number of commenters endorsed the approach of specifying the rate of water flow through the Yucca Mountain repository (expressed as deep percolation rate) as an appropriate and practical approach to adopting EPA’s requirement to consider the effect of climate variation after 10,000 years. Several commenters indicated that the basis for the proposed regulation was not clearly explained. Also, several commenters questioned the specific range of deep percolation rates discussed in the proposed regulation. The State of Nevada raised a number of additional concerns. First, the State questioned the validity of estimating infiltration using a constant climate state. Second, the State questioned the range of uncertainty used to represent infiltration for present-day and future climate in the long-term-average estimates. Third, the State questioned the adequacy of computer models (e.g., one-dimensional models without lateral distribution) to extrapolate net infiltration values to future climates.

Fourth, the State questioned the assumption that plant and soil regimes remain stationary during future climate states. Another commenter was concerned with the assumption that spatial variability of infiltration remains constant over time. NEI commented that requiring climate to be assumed constant at present-day conditions over the post-10,000 year period would be a more appropriate implementation of a stylized approach. NEI also considered the range of 5 to 20 percent for the ratio of the deep percolation rate to precipitation rate, used to support the deep percolation rates in the proposed rule, was too large and provided an alternative range of 5 to 10 percent. DOE commented that deep percolation rates appear to be skewed to the maximum deep percolation rate rather than a rate obtained from the full range of expected climate.

*Response.* Having considered the comments and conducted further analyses, the final regulations specify a slightly different range for the deep percolation rate from the proposed rule. The final rule now specifies that deep percolation rates averaged over the period of 10,000 to 1 million years in the future may be reasonably described with a “truncated” lognormal distribution,<sup>4</sup> which varies between 10 and 100 mm/year (0.39 and 3.9 in./year). To address commenters’ concerns with respect to certain simplifying assumptions used to estimate the deep percolation rates (e.g., range of 5 to 20 percent for the ratio of the deep percolation rate to precipitation rate) the NRC has conducted more sophisticated analyses, which are now used to support the estimates for the deep percolation rates. The distribution of deep percolation rates is based on the analysis of Stothoff and Walter, “Long-Term Average Infiltration at Yucca Mountain, Nevada: Million-Year Estimates,” San Antonio, TX: Center for Nuclear Waste Regulatory Analyses (2007), who estimated deep percolation areally averaged within a rectangle overlying the repository footprint considering uncertainty in both climate and net infiltration. The analysis suggested that long-term-average deep percolation is better represented by a “truncated” lognormal distribution than the originally proposed log-uniform distribution that ranged from 13 to 64 mm/year (0.5 to 2.5 in./year). The NRC

adopted a “truncated” lognormal distribution between the 5th and 95th percentiles of the lognormal distribution to represent reasonable lower and upper limits for the long-term average deep percolation rates. The revised distribution for deep percolation is consistent with available deep percolation estimates from Yucca Mountain, recharge estimates from a wide range of elevations in central and southern Nevada, and uncertainty estimates from a numerical model. The “truncated” lognormal distribution has an arithmetic mean of 37 mm/year (1.5 in./year) for the deep percolation rate as compared to an arithmetic mean of 32 mm/year (1.3 in./year) based on the range and distribution in the proposed regulations. Although the upper limit of the deep percolation rate [i.e., 100 mm/year (3.9 in./year)] in final regulations is almost twice the upper limit in the proposed regulation [i.e., 64 mm/year (2.5 in./year)], the deep percolation rates in the final regulations, on average, represent only slightly wetter conditions than what was specified in the proposed regulations [i.e., arithmetic mean of 37 versus 32 mm/year (1.5 versus 1.3 in./year)]. Truncation of the lognormal distribution between 10 and 100 mm/year (0.39 and 3.9 in./year) results in reasonable lower and upper limits for the long-term average deep percolation rates. If the lower and upper limits were extended further, the resulting arithmetic mean of the distribution would change very little because of the decreasing probability of values that occur at the tails (or extremes) of a lognormal distribution.

To document more clearly the technical bases for the proposed range of long-term-average future deep percolation rates expected at Yucca Mountain during the post-10,000 year period, the NRC conducted additional detailed climate and infiltration analyses, which are reported in Stothoff and Musgrove, “Literature Review and Analysis: Climate and Infiltration,” San Antonio, TX: Center for Nuclear Waste Regulatory Analyses (2006) and Stothoff and Walter (2007). Stothoff and Musgrove (2006) provide a comprehensive review and analysis of relevant infiltration and recharge studies that have been conducted for the Yucca Mountain region, the Death Valley region, the southern and central Great Basin of Nevada, and analogous arid to semi-arid regions in the western United States and the world. Stothoff and Walter (2007) describe additional technical investigations of estimated precipitation rates and temperatures for the past 1 million years in the Yucca

<sup>4</sup> The truncated lognormal distribution is based on a lognormal distribution with an arithmetic mean of 41 mm/year (1.6 in./year) and a standard deviation of 33 mm/year (1.3 in./year). The 5th and 95th percentiles of this lognormal distribution are approximately 10 and 100 mm/year (0.39 and 3.9 in./year), respectively.

Mountain region based on various climate proxy data reported in the literature. Stothoff and Walter (2007) link these past precipitation and temperature estimates with a well-accepted glacial model based on orbital dynamics to estimate precipitation and temperature sequences for the next 1 million years. Finally, Stothoff and Walter (2007) use these future climate sequences with infiltration relationships supported by the data described in Stothoff and Musgrove (2006) and site observations at Yucca Mountain to estimate the range of long-term-average future deep percolation rates at Yucca Mountain during the post-10,000 year period.

Contrary to inferences made by the State of Nevada, the revised distribution for deep percolation does not use steady-state hydrology based on annual average precipitation to estimate deep percolation. Stothoff and Walter (2007) considered the time-varying response of net infiltration to precipitation at time scales ranging from individual precipitation events, to decadal-scale averages, to millennial-scale glacial stages to derive estimates of long-term-average deep percolation.

Stothoff and Walter (2007) considered the response of net infiltration to climate at approximately 16,000 locations across Yucca Mountain to derive estimates of long-term-average deep percolation averaged over the repository footprint. Uncertainty in each of the hydraulic and climatic factors affecting infiltration was considered at each of the 16,000 locations. Stothoff and Walter (2007) found that a lognormal distribution for areal-average net infiltration reasonably reflects the effect of the uncertainty in these factors. Stothoff and Walter (2007) did not use the INFIL version 2 model developed by the U.S. Geological Survey (USGS) for this analysis, nor did they neglect lateral redistribution of runoff.

The State of Nevada questioned the appropriateness of using a stationary hydrologic state to describe plant and soil characteristics in numerical modeling and another commenter was concerned with the assumptions that the spatial variability of infiltration remains constant over time. The deep percolation model described by Stothoff and Walter (2007) does not use a stationary description for plant uptake. It does use a stationary description for soil characteristics but recognizes that soil thicknesses and soil texture may change over a glacial cycle. Stothoff and Walter (2007) consider the likely influence of such changes on net infiltration to be relatively small compared to the overall uncertainty in

net infiltration. Soil evolution under glacial conditions will tend to deepen soil profiles over time and make the soil texture finer than at the present time, which would tend to reduce net infiltration at the end of a long, wetter glacial interval. Soil cover tends to erode under interglacial conditions, which may promote net infiltration during dry intervals. NRC considers it reasonable to neglect soil evolution because soil evolution would tend to make net infiltration under both glacial and interglacial climatic states more like the long-term-average infiltration. Although soil properties are stationary in the deep percolation model in Stothoff and Walter (2007), plant uptake is not and therefore the spatial variability of deep percolation in the model of Stothoff and Walter (2007) is not constant over time.

NEI commented that the 1-million-year-average deep percolation rates used for performance assessments should be maintained at present-day values because this would be more conservative with respect to groundwater usage for dose calculations for the RMEI. Deep percolation rates in Yucca Mountain do not affect the groundwater usage rate of the RMEI for evaluating compliance with the post-10,000 year individual protection standard. Groundwater usage rates at the location of the RMEI as prescribed at 10 CFR 63.312(c) are fixed at an annual water demand of 3.7 million cubic meters (3,000 acre-feet). DOE commented that, considering the analyses by Sharpe “(Future Climate Analysis: 10,000 Years to 1,000,000 Years After Present,” Reno, NV: Desert Research Institute, 2003), the proposed probability distribution was skewed towards maximal percolation rates because the full range of potential climates was not considered in the regulation. Stothoff and Walter (2007) compared net infiltration estimates using potential future climate sequences obtained from an independent model based on site and regional observations and a global ice volume model, and sequences obtained from a slightly modified version of the Sharpe (2003) model. The Sharpe (2003) model was modified to update the present-day climate with site-specific present-day climate observations from BSC (“Simulation of Net Infiltration for Present-Day and Potential Future Climates,” Las Vegas, NV: Bechtel SAIC Company, LLC, 2004). The modified Sharpe model yields an estimate for long-term-average deep percolation with a mean value of 44 mm/year (1.7 in./year) and values of 9.9 and 103 mm/year

(0.39 and 4.1 in./year) at the 5th and 95th percentiles, respectively. The independent model, which was used to specify the deep percolation distribution in the regulation, has a mean value of 41 mm/year (1.6 in./year) and values of 10 and 102 mm/year (0.39 and 4.0 in./year) at the 5th and 95th percentiles, respectively. Because the two independent climate sequences consider a wide range of potential climates yet yield similar infiltration estimates, the NRC believes the distribution of deep percolation rates adopted in the final regulation is not skewed toward maximal percolation rates.

*Issue 6:* Is the NRC guidance document on uncertainty and analysis of infiltration and subsurface flow and transport, intended for Site Decommissioning Management Plan (SDMP) sites, applicable to establishing an appropriate stylized climate scenario for times beyond 10,000 years at the potential high-level radioactive waste (HLW) disposal site at Yucca Mountain?

*Comment.* One commenter noted there is no clear indication whether or how NRC’s existing guidance on accounting for uncertainty when establishing infiltration rates has been applied. Specifically, the commenter referred to NUREG/CR-6565, “Uncertainty Analysis of Infiltration and Subsurface Flow and Transport for SDMP Sites” (1997).

*Response.* The guidance presented in NUREG/CR-6565 is intended to be used only at SDMP sites. Therefore, NUREG/CR-6565 is not directly applicable to a potential high-level waste disposal site. However, the methods NRC uses to account for uncertainty in its independent estimate of infiltration rates (deep percolation) for both present and future climatic conditions at Yucca Mountain encompass and exceed in sophistication the methods discussed in NUREG/CR-6565. The technical methods used by the NRC to account for uncertainty are discussed in detail under Issue 5 (What is the range of estimated present-day deep percolation rates and the appropriate range of future deep percolation rates?).

The guidance in NUREG/CR-6565 applies to SDMP sites and recommends an appropriate level of modeling sophistication commensurate with the risk of such sites. This is consistent with NRC’s general approach of using simple models for simple sites with low likelihood of exceeding exposure criteria, and using increasingly sophisticated models and requiring more robust data for more complex sites that pose potentially greater risks to public safety. The more detailed

requirements in Part 63 and the associated guidance in the YMRP are appropriate for the site complexity of Yucca Mountain and for the greater risk associated with HLW disposal.

For example, NUREG/CR-6565 recommends the use of generic models, such as Residual Radiation (RESRAD) and Multimedia Environmental Pollutant Assessment System (MEPAS), which simplify the physical system to reduce computational effort. Conversely, a site-specific performance assessment model with all the processes considered important at Yucca Mountain is needed to determine if Part 63 performance objectives are met. Both generic models and site-specific models are typically run in Monte Carlo mode to address uncertainty. In addition, NUREG/CR-6565 provides tables of generic hydraulic parameter distributions to use in lieu of site-specific parameters that are not typically available for SDMP sites, whereas the YMRP provides technical acceptance criteria for data sufficiency and uncertainty specific to Yucca Mountain.

*Issue 7:* To what degree does the stylized climate scenario depend on information provided by the USGS?

*Comment.* One commenter indicated NRC's proposal is unsupportable because it is based on the past work of USGS personnel that is the subject of continuing criminal and civil investigation because of the apparent falsification of infiltration data and associated quality assurance records.

*Response.* The stylized climate scenario and deep percolation rate in the final rule do not depend only on information provided by the USGS. The NRC has developed its own model and has performed independent field observations and measurements to support this final rule. In addition, the NRC has evaluated other regional information to corroborate its estimates of percolation under different climate regimes (Stothoff and Musgrove, "Literature Review and Analysis: Climate and Infiltration," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, 2006).

To address uncertainty in estimates of net infiltration (and hence, deep percolation) during future climates, NRC developed its own independent climate and net infiltration models. Some DOE information that NRC judged to be reasonable from a scientific perspective was used in the model inputs. Further, NRC understands that DOE has reaffirmed the quality of data used in response to the USGS e-mail issue investigations. For important model inputs, NRC independently

collected data to gain confidence in the model results.

Three of the most important model inputs are precipitation, soil thickness, and incident solar energy. For precipitation, NRC analyzed local and regional data patterns and developed a future climate model based on ice core volumes (Stothoff and Walter, "Long-Term Average Infiltration at Yucca Mountain, Nevada: Million-Year Estimates," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, 2007). NRC climate model results were compared with indirect observations such as lake records and glacier advances in the Sierra Mountains. For soil thickness, NRC made its own measurements at the ridges and hillslopes of Yucca Mountain (Fedors, "Soil Depths Measured at Yucca Mountain During Site Visits in 1998," Interoffice Note to J. Guttman, Washington, DC: Nuclear Regulatory Commission, January 9, 2007). NRC used the measurements of soil depth to gain confidence in its own model for soil thickness across the Yucca Mountain area. For the incident solar energy, which is important for evaporation in this semi-arid climate, NRC independently developed its own energy model from the general literature (Stothoff, "BREATH Version 1.1—Coupled Flow and Energy Transport in Porous Media: Simulator Description and User Guide," Washington, DC: Nuclear Regulatory Commission, 1995).

Previously, NRC had developed a bulk bedrock permeability model (Waiting, *et al.* "Technical Assessment of Structural Deformation and Seismicity at Yucca Mountain, Nevada," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, 2001) and performed independent soil permeability measurements, which provided a basis to evaluate the reasonableness of related DOE data "Infiltration Tabulator for Yucca Mountain: Bases and Confirmation," San Antonio, TX: Center for Nuclear Waste Regulatory Analyses, August, 2008; and Fedors (Soil Hydraulic Properties Measured During Site Visits to Yucca Mountain, Nevada," Interoffice Note to E. Peters, Washington, DC: Nuclear Regulatory Commission, August, 2008).

NRC's model for estimating net infiltration is independent of the DOE model and uses a different conceptualization. The NRC model is a physically-based numerical heat and mass transfer model, which solves the Richards equation for water flow, with hourly climatic inputs to determine net infiltration for a range of climates and hydraulic property sets. Results from the heat and mass transfer model are

used to develop an abstraction that is applied to Geographical Information System (GIS) based inputs covering the Yucca Mountain area. In addition, a surface water flow model based on the kinematic wave equation and linked to a two-layer infiltration algorithm is used to develop abstracted results to account for the effect of runoff and runoff. The DOE model, on the other hand, is based on a water balance or "bucket," approach. The DOE model is applied within a GIS framework and includes surface water routing.

Irrespective of the USGS matter, NRC is confident its model for estimating net infiltration is reasonable, because NRC has developed its model independent of DOE and DOE's contractors, NRC performed independent field observations and measurements, and NRC evaluated other regional information to corroborate its estimates of deep percolation rates under different climate regimes.

*Issue 8:* Does NRC's specification of a particular value for deep percolation at this time limit the consideration of future scientific information for changing the specified value?

*Comment.* One commenter stated that the specification of an infiltration rate years before DOE's license application is even filed is premature and unwise given the potential for new models for infiltration, which will likely have enhanced spatial and temporal resolution. Another commenter stated that if DOE's climatic analysis and forecast differ from the deep percolation rates set in the amended rule, then NRC's specification for deep percolation should serve as a point of reference in NRC's license review proceedings. NRC license reviewers should be open to the possibility that other analytical methods may exist for addressing future climate changes for such long periods. New models for climate change may include consideration of potential future anthropogenic influences on Yucca Mountain.

*Response.* The Commission disagrees with the commenters. The NRC recognizes that scientific progress is expected to continue the understanding of potential future climate. However, the intention of the rule is to specify a reasonable basis for evaluating safety using current knowledge. Given the current approach for estimating deep percolation, it would take a major shift in scientific understanding for the deep percolation rates to change significantly. For example, if future scientific advances suggest there is a period when there would be no rainfall in the Yucca Mountain area for a period of 100,000 years, this would result in a ten percent

change in the long-term average over the 1-million-year period. Such changes are not expected to significantly change dose estimates. However, if future scientific advances show the regulation is no longer sufficiently protective of public health and safety and the environment, NRC would not hesitate to propose appropriate changes to the regulations.

Further, if any person believes that the specification for climate change no longer provides a reasonable basis for demonstrating compliance based on new scientific evidence, they can petition NRC to amend the rules. In addition, NRC's procedural rules enable any party to an adjudicatory proceeding to petition that application of a rule be waived in circumstances when the rule would not serve the purposes for which it was adopted [See also response to Issue 3 under NRC Adoption of EPA Standards and Response to Issue 7 under Clarification of NRC's Implementation of FEPs for the Performance Assessment for the Period after 10,000 Years of this document].

*Issue 9:* Does NRC's analytical basis for its specification of a deep percolation rate comply with the Information Quality Act (IQA) and the associated Office of Management and Budget (OMB) guidelines?

*Comment.* The State of Nevada stated that NRC's calculations and judgments did not undergo scientific peer review, contrary to the IQA and OMB guidelines. The State asserted that NRC is overwhelmingly relying on EPA information and indirectly on EPA's contractor documents cited in the proposed standards.

*Response.* NRC considers its calculations and technical bases supporting the deep percolation estimates to be consistent with the IQA and the associated OMB guidelines concerning peer review. The OMB peer review guidance applies to "influential scientific information" that will have a clear and substantial impact on important public policies or the private sector (70 FR 2667; January 14, 2005). The distribution and range for deep percolation rates have a limited effect on repository performance and expected dose given the nature of the geologic environment and anticipated performance of engineered barriers (see response to Issue 3 under Climate Change of this document). Specifying deep percolation assumptions in NRC regulations limits unbounded speculation concerning a narrow and discrete aspect of the overall performance assessment. Doing so does not determine either how DOE will apply that range of rates over the entire

repository horizon or DOE's related analysis of the consequences for repository performance, much less constrain an NRC conclusion with respect to the acceptability of a potential application. Consequently, NRC does not consider its specification of the deep percolation rates or the data supporting it to be influential scientific information within the meaning of the OMB guidance.

As discussed in relation to Climate Change issues 1 through 7 of this document, NRC's estimates of deep percolation are appropriate and well-supported. Based on public comment, the NRC has revised its specification for deep percolation values and provided additional clarification for the basis of the range of values (see Climate Change responses in this document). Further, these values are independent of any work or information provided by EPA or its contractors. With respect to the basis for the deep percolation rates, the NRC is not, as asserted by the State of Nevada, "overwhelmingly relying on EPA information, including EPA's contractor documents" in its calculations and judgments when the responsibility rests with NRC.

#### 4. Use of Current Dosimetry

*Issue 1:* Is the specification for using current methods of dosimetry and updated models for calculating potential radiation exposures sufficiently clear?

*Comment.* DOE commented that the proposed approach for using current methods for dosimetry and updated models for dose calculations should be clarified in two specific areas. First, the definition for "weighting factor" in the proposed regulation refers only to the tissue weighting factors provided in Appendix A of EPA's proposed standards and does not directly identify the radiation weighting factors also included in Appendix A. This definition should be expanded to include the radiation weighting factors specified in EPA's proposed standards. Second, Federal Guidance Report 13 is the current guidance report for estimating radiation doses; however, this report considers a slightly different set of organs than those included by EPA in Table A.2 (70 FR 49063), which represents the most current recommendations from the International Commission on Radiological Protection (ICRP). Clarification is needed on using current dosimetry methods because of the potential for differences in the list of organs considered in a particular method. Additionally, DOE suggested that one potential solution was for NRC to simply require that the calculation of doses be consistent with ICRP 60/72

methodology, use current scientific methods, and not provide any specific values in the regulation.

*Response.* The definition for "weighting factor" for an organ or tissue in the proposed regulation states that "the values" in Appendix A of 40 CFR Part 197 are to be used for calculating the effective dose equivalent. This statement was intended to indicate that all the values in Appendix A (weighting factors for both radiation and for an organ or tissue) are to be used for calculating the effective dose equivalent. The Commission no longer considers it necessary to add a definition of the weighting factor in order to implement the values in Appendix A. Instead, the Commission clarifies the "implementation" of total effective dose equivalent (TEDE), specifically, the manner in which the values in Appendix A are to be used in dose calculations. The new text on the implementation of TEDE now states that the radiation and organ or tissue weighting factors in Appendix A are to be used in calculating the effective dose equivalent. Implementation of TEDE appears in the concepts section of Subpart E (Technical Criteria) in Part 63. Based on the added text on implementation of TEDE, the proposed definition for weighting factor is no longer necessary and has been removed in the final regulation.

The Commission is aware that as dosimetry methods have advanced, additional organs have been considered in determining weighting factors and thus, there are differences in the lists of organs used in specific methods for estimating dose. The intent of the standards and regulations is to provide an approach for using currently accepted dosimetry methods and updated models for estimating radiation exposures and *not* for fixing a list of organs or tissues. The Commission considers currently accepted dosimetry methods to include those incorporated by EPA into federal radiation guidance as well as those included in 40 CFR Part 197, Appendix A. The Commission recognizes that the information presently available from consensus scientific organizations on newer dosimetric models (e.g., tabulations of calculated dose coefficients) differ for internal dose estimation relative to external dose estimation. Given this circumstance, use of external dosimetry methods in existing federal radiation guidance, Federal Guidance Report No. 12 (EPA, 1993), in combination with the more current internal dosimetry methods consistent with 40 CFR Part 197, Appendix A, is an acceptable approach for calculating TEDE.

Whatever dosimetry method is used to estimate dose, it is expected that the calculation will consider the list of organs or tissues appropriate to that specific method. One way to clarify this issue would be to adopt the DOE suggestion to merely require that the calculation of doses be consistent with ICRP 60/72 methodology and use current scientific methods, and not provide any specific values in the regulation. Appendix A of the EPA Standards (73 FR 61256; October 15, 2008) allows NRC to permit DOE to use revised weighting factors as updates are made in the future when these factors have been issued by a consensus of scientific organizations and incorporated by EPA into Federal radiation guidance. Rather than adopt the DOE suggestion that includes a reference to a specific methodology, the Commission considers it more appropriate to add text on implementing TEDE to:

(1) Clarify that whatever methodology is adopted the weighting factors used in the calculation of dose are to be appropriate to the specific method;

(2) Continue to refer to the values provided in Appendix A of the standards as the values that are presently considered to be current and appropriate; and

(3) Prescribe the basis how DOE may be allowed to use newer methods and models.

Thus, the regulations provide a consistency between the requirements for dose calculations and the scientific models and methodologies for calculating dose as scientific knowledge improves. Additionally, NRC's Regulatory Issue Summary 2003-04, "Use of the Effective Dose Equivalent in Place of the Deep Dose Equivalent in Dose Assessments," provides further information on this topic.

The implementation of TEDE is applicable in the context of dose calculations performed to demonstrate compliance with the requirements for a potential repository at Yucca Mountain.

*Issue 2:* Should the definition for TEDE include clarification regarding how operational doses to workers are to be calculated?

*Comment.* DOE commented that the definition of TEDE should clarify that assessing (monitoring) external exposure to workers during operations should use the deep-dose equivalent, whereas, potential external doses to workers in the future should be calculated using an effective dose equivalent. This clarification is necessary to resolve potential inconsistencies in the application of dose calculations between Parts 20 (i.e.,

monitored doses) and 63 (calculated doses).

*Response.* Clarification regarding the monitoring of doses versus calculation of doses is essentially an issue of implementation of TEDE and is not one of redefining the term itself. Therefore, NRC is adding a separate discussion regarding implementation of TEDE in the concepts section of Subpart E (Technical Criteria) in Part 63 to provide the necessary clarification rather than modifying the definition of TEDE. The NRC is also revising the definition for TEDE in Part 63 to be consistent with the definition for TEDE in Part 20 to further clarify this is an issue of implementation of TEDE and not the definition of TEDE.

As correctly stated in the comment, the deep-dose equivalent is an approach used for measuring external doses in the field, as is often done for demonstrating compliance with occupational exposures. The new text on implementation of TEDE clarifies that:

(1) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent is to be used instead of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC;

(2) The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure; and

(3) The assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.

The added text on implementation of TEDE provides the necessary clarification on how the deep-dose equivalent is to be used in determining compliance with the regulations for Yucca Mountain. Additionally, NRC's Regulatory Issue Summary 2003-04, "Use of the Effective Dose Equivalent in Place of the Deep Dose Equivalent in Dose Assessments," provides further information on this topic.

#### 5. Comments Beyond the Scope of This Rulemaking

Some commenters submitted comments which are beyond the scope of this rulemaking as described in NRC's notice of proposed rulemaking. NRC responds to some of the concerns raised below. In addition, the State of Nevada requested that comments viewed as being beyond the scope of the rulemaking be considered as a petition for rulemaking. The State is familiar with NRC's process for considering petitions for rulemaking which is initiated by submittal of a petition

under 10 CFR 2.802 which meets the criteria of 10 CFR 2.802(c).

*Issue 1:* Were intergovernmental meetings concerning the proposed EPA standards inappropriate?

*Comment.* The State of Nevada and some other commenters suggested that non-public intergovernmental meetings at which EPA's proposed standards were discussed were somehow inappropriate and cast a cloud on EPA and NRC rules. These commenters cite no laws nor regulations barring such discussions but nevertheless assume that such meetings should not have taken place.

*Response.* In the Nuclear Waste Policy Act of 1982, as amended (NWSA), Congress recognized the responsibility of the Federal Government to provide for the permanent disposal of HLW and spent nuclear fuel in order to protect public health and safety and the environment. Congress, in the NWSA and later in the EnPA, charged EPA and NRC with specific direction for developing standards and regulations for Yucca Mountain: EPA is to provide public health and radiation protection standards; NRC is to provide implementing regulations for those standards and is to consider a license application from DOE for the construction, operation, and closure of the repository at a site DOE has found suitable. It makes little sense for these agencies to act oblivious to the views of each other as to how protection of public health and safety and the environment with respect to a geologic repository can best be accomplished. It is both appropriate and important for NRC to be able to explain and discuss its regulatory approach in the context of the EPA standard with other Federal agencies. The State, in fact, recognizes this. In its comments, the State urged NRC to "convince EPA to adopt a more reasonable and protective standard."

Although intergovernmental meetings are not normally open to the public, what is important is the fact that no "secret" decisions resulted from interagency discussions. Both the EPA's proposed standards and NRC's proposed regulations, including their rationale, were provided to the public for comment. After careful consideration of the public comments, both EPA and NRC have explained and documented their final standards and regulations, including how public comments were taken into account. The standards and regulations will stand or fall on the basis of the public record on which they rest, not on the basis of any discussions that may have taken place while the standards were being formulated.

*Issue 2:* Should NRC provide additional requirements for defense-in-depth?

*Comment.* The State of Nevada believes that a meaningful defense-in-depth standard is missing from the NRC rule. The State also suggested that a requirement pertaining to the expected performance of natural barriers would offer an essential protective feature for coping with early waste package failure (noting that the International Atomic Energy Agency (IAEA) has suggested that “overall performance of the geologic disposal system shall not be unduly dependent on a single barrier or function”).

*Response.* The Commission considers the approach for multiple barriers and defense-in-depth in Part 63 appropriate and protective. When NRC issued final Part 63 on November 2, 2001 (66 FR 55758), the Commission stated the goal of the current regulations regarding multiple barriers and defense-in-depth and explained its reasoning for not specifying requirements for specific barriers:

The emphasis should not be on the isolated performance of individual barriers but rather on ensuring the repository system is robust, and is not wholly dependent on a single barrier. Further, the Commission supports an approach that would allow DOE to use its available resources effectively to achieve the safest repository without unnecessary constraints imposed by separate, additional subsystem performance requirements.

It is also important to remember that part 63 requires DOE to carry out a performance confirmation program to provide further confidence that barriers important to waste isolation will continue to perform as expected (66 FR 55758).

The court addressed this same issue in Nevada’s suit challenging the Part 63 rule:

Specifically, Nevada contests NRC’s use of defense-in-depth at the proposed Yucca Mountain repository through an *overall* system performance assessment rather than using the approach of its older regulations, which approach tests the individual performance of the repository’s ‘system elements.’ \* \* \* In light of NRC’s detailed analysis supporting its decision to evaluate the performance of the Yucca Mountain repository based on the barrier system’s overall performance, we believe that it adequately explained its change in course. \* \* \* Accordingly, we conclude that NRC acted neither arbitrarily nor capriciously in rejecting part 60’s subsystem performance approach in favor of the overall performance approach. *NEI v. EPA*; 373 F.3d 1251, 1295–97

(DC Cir. 2004).

*Issue 3:* Should NRC disabuse EPA of its mistaken impression that there is some significant difference between

“reasonable assurance” and “reasonable expectation?”

*Comment.* The State of Nevada asserted that NRC must disabuse EPA of its mistaken impression that there is some significant difference between the term “reasonable assurance” and the term “reasonable expectation.”

*Response.* As noted by the State, NRC and the State have already agreed that the two terms are substantially identical, *see NEI v. EPA*; 373 F.3d 1251, 1301 (D.C. Cir. 2004).

*Issue 4:* Should NRC prohibit DOE from relying on drip shields that may be installed in the distant future (e.g., 300 years from now)?

*Comment.* The State of Nevada expressed concern that drip shields could be scheduled for installation many years in the future and, thus, there is no real guarantee that this safety feature will actually be installed. There is no reliable way to commit future decision-makers on this point. Therefore, NRC should not allow DOE to rely on the drip shields in demonstrating compliance with the post-closure performance objectives.

*Response.* DOE must apply to NRC for authorization to build the proposed repository. Under NRC’s regulations, DOE must show, among other things, that its proposal will comply with specified performance objectives for the geologic repository after permanent closure. On June 3, 2008, DOE submitted a license application to NRC for authorization to construct a repository at Yucca Mountain. The NRC staff will evaluate whether DOE’s proposed design, including reliance on any specific design feature or component of the engineered barrier system as described in the application, succeeds in making the required demonstration.

The NRC staff will then document its assessment in a Safety Evaluation Report. If the NRC staff recommends that NRC authorize construction, the staff may specify potential license conditions, as needed, to provide reasonable expectation that relevant performance objectives will be met. NRC can only assess the need for such conditions, their reasonableness, and their potential to be enforced in the context of DOE’s overall design as presented in a license application. If DOE proposes to install drip shields and if the drip shields are considered important for waste isolation or repository performance, the installation of the drip shield at an appropriate time would become part of the license conditions. At a later date, if DOE proposes not to install the drip shields, DOE would be obligated to seek specific

regulatory approval in the form of a license amendment. Any NRC decision to grant or deny such an amendment request would be based on NRC’s independent technical review and would be subject to a potential hearing as part of the amendment process.

*Issue 5:* Should NRC incorporate into the final rule requirements for compliance monitoring and measures to be taken in the event of non-compliance?

*Comment.* Some commenters pointed out that NRC’s proposed rule appears to be silent with regard to requirements for compliance monitoring and related measures to be taken if said monitoring demonstrates noncompliance with established standards. The commenters encouraged NRC to incorporate such requirements into the final rule.

*Response.* Part 63 contains requirements for monitoring up to the time of permanent closure in Subpart F. Should the NRC grant the DOE a license to operate the repository, DOE must also provide a description of its program for post-permanent closure monitoring in its application to amend its license for permanent closure. *See*, § 63.51(a)(2). The commenters’ concerns regarding further monitoring and related measures can be considered at that time.

*Issue 6:* Will adoption of the EPA standards necessitate revision of the “S–3” rule?

*Comment.* The State of Nevada believes that NRC’s adoption of EPA’s standards with no added protections will require NRC to revisit its “S–3” rule, 10 CFR 51.51, because this rule currently includes a “zero-release” assumption that the long-term effects of disposing of spent fuel and HLW will be essentially zero because there would be no releases that would harm people or the environment after the repository is sealed. The State believes that this will no longer be the case if NRC adopts EPA’s 3.5 mSv (350 mrem) standard for the post-10,000 year period.

*Response.* As explained in the response to the comment on Issue 1 under NRC Adoption of EPA Standards of this document, EnPA requires the Commission to modify its technical criteria to be consistent with EPA’s standards for a geologic repository at the Yucca Mountain site. Moreover, the question whether the “zero-release” assumption of the S–3 rule may need to be revisited in the future is not presented in this rulemaking proceeding.



#### IV. Summary of Final Revisions

##### Section 63.2 Definitions

The definition of “performance assessment” is revised to exclude the limitation of “10,000 years after disposal,” consistent with EPA’s modified definition of “performance assessment.” The definition for “total effective dose equivalent” is revised to be consistent with Part 20.

##### Section 63.102 Concepts

A discussion of the implementation of total effective dose equivalent (TEDE) is added to the concepts section to clarify how the weighting factors specified in EPA’s final standards are to be used for calculating potential exposures.

##### Section 63.114 Requirements for Performance Assessment

This section specifies the requirements for the performance assessment used to demonstrate compliance with the postclosure performance objectives. This section is revised to conform to EPA’s final standards that specify what DOE must consider in the performance assessment for the period after 10,000 years *i.e.*, the performance assessment methods meeting the existing requirements for the initial 10,000 years are appropriate and sufficient for the period after 10,000 years.

##### Section 63.302 Definitions for Subpart L

The definition for the “period of geologic stability” is modified, consistent with EPA’s final standards, to clarify that this period ends at 1 million years after disposal.

##### Section 63.303 Implementation of Subpart L

This section provides a functional overview of this subpart. This section is revised to conform to EPA’s final standard that specifies for the period after 10,000 years, the arithmetic mean of the estimated doses is to be used for determining compliance.

##### Section 63.305 Required Characteristics of the Reference Biosphere

This section specifies characteristics of the reference biosphere to be used by DOE in its performance assessments to demonstrate compliance with the postclosure performance objectives specified at § 63.113. This section is modified to conform to EPA’s final standards, which specify the types of changes DOE must account for in the performance assessment for the period

after 10,000 years and through the period of geologic stability.

##### Section 63.311 Individual Protection Standard After Permanent Closure

This section specifies the dose limit for individual protection after permanent closure for any geologic repository at the Yucca Mountain site. This section is modified to conform with EPA’s final standards for the peak dose after 10,000 years and through the period of geologic stability.

##### Section 63.321 Individual Protection Standard for Human Intrusion

This section directs DOE to estimate the dose resulting from a stylized human intrusion drilling scenario and specifies the dose limit that any geologic repository at the Yucca Mountain site must meet as the result of a hypothetical human intrusion. This section is modified to conform with EPA’s final standards for the peak dose after 10,000 years and through the period of geologic stability.

##### Section 63.341 Projections of Peak Dose

This section has been removed to be consistent with EPA’s final standards.

##### Section 63.342 Limits on Performance Assessments

This section specifies how DOE will identify and consider features, events, and processes in the dose assessments described in Subpart L to Part 63. This section is modified to conform to EPA’s final standards that specify the types of changes DOE must account for in the performance assessment for the period after 10,000 years and through the period of geologic stability. A range and distribution for deep percolation rates are specified that DOE must use to represent the effects of climate change after 10,000 years and through the period of geologic stability. These criteria are substantially the same as those proposed by EPA and NRC with the exception of the constraint that requires DOE to consider, in its performance assessment, changes to the elevation of the water table under Yucca Mountain (*i.e.*, water table rise) from a seismic event, which is included in the final regulations.

#### V. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not

required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations.

#### VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC implements site-specific standards proposed by EPA and developed solely for application to a proposed geologic repository for high-level radioactive waste at Yucca Mountain, Nevada. This action does not constitute the establishment of a standard that sets generally applicable requirements.

#### VII. Finding of No Significant Environmental Impact: Availability

Under Section 121(c) of the Nuclear Waste Policy Act, this final rule does not require the preparation of an environmental impact statement under Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) or any environmental review under paragraphs (E) or (F) of Section 102(2) of NEPA.

#### VIII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by OMB, approval number 3150–0199.

##### Public Protection Notification

NRC may not conduct nor sponsor, and a person is not required to respond to, a request for information nor an information collection requirement, unless the requesting document displays a currently valid OMB control number.

#### IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission, consistent with the options that are available to NRC in carrying out the statutory directive of EnPA. The analysis is available for inspection in the NRC PDR, Room



O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD.

## X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects the licensing of only one entity, DOE, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

## XI. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

## XII. Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### List of Subjects in 10 CFR Part 63

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 63.

### PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2238, as amended (42

U.S.C. 10134, 10141); and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 2. Section 63.2 is amended by revising paragraph (1) of the definition of "performance assessment" and revising the definition of "total effective dose equivalent (TEDE)" to read as follows:

#### § 63.2 Definitions.

\* \* \* \* \*

*Performance assessment* means an analysis that: (1) Identifies the features, events, processes (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring;

\* \* \* \* \*

*Total effective dose equivalent (TEDE)* means the sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

\* \* \* \* \*

■ 3. In § 63.102 paragraph (o) is added to read as follows:

#### 63.102 Concepts.

\* \* \* \* \*

(o) *Implementation of TEDE.* When external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC. The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The radiation and organ or tissue weighting factors in Appendix A of 40 CFR part 197 are to be used to calculate TEDE. After the effective date of this regulation, the Commission may allow DOE to use updated factors, which have been issued by consensus scientific organizations and incorporated by EPA into Federal radiation guidance. Additionally, as scientific models and methodologies for estimating doses are updated, DOE may use the most current and appropriate (e.g., those accepted by the International Commission on Radiological Protection) scientific models and methodologies to calculate the TEDE. The weighting factors used in the calculation of TEDE must be consistent with the methodology used to perform the calculation.

■ 4. Section 63.114 is revised to read as follows:

#### 63.114 Requirements for performance assessment.

(a) Any performance assessment used to demonstrate compliance with § 63.113 for 10,000 years after disposal must:

(1) Include data related to the geology, hydrology, and geochemistry (including disruptive processes and events) of the Yucca Mountain site, and the surrounding region to the extent necessary, and information on the design of the engineered barrier system used to define, for 10,000 years after disposal, parameters and conceptual models used in the assessment.

(2) Account for uncertainties and variabilities in parameter values, for 10,000 years after disposal, and provide for the technical basis for parameter ranges, probability distributions, or bounding values used in the performance assessment.

(3) Consider alternative conceptual models of features and processes, for 10,000 years after disposal, that are consistent with available data and current scientific understanding and evaluate the effects that alternative conceptual models have on the performance of the geologic repository.

(4) Consider only features, events, and processes consistent with the limits on performance assessment specified at § 63.342.

(5) Provide the technical basis for either inclusion or exclusion of specific features, events, and processes in the performance assessment. Specific features, events, and processes must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible environment, for 10,000 years after disposal, would be significantly changed by their omission.

(6) Provide the technical basis for either inclusion or exclusion of degradation, deterioration, or alteration processes of engineered barriers in the performance assessment, including those processes that would adversely affect the performance of natural barriers. Degradation, deterioration, or alteration processes of engineered barriers must be evaluated in detail if the magnitude and time of the resulting radiological exposures to the reasonably maximally exposed individual, or radionuclide releases to the accessible environment, for 10,000 years after disposal, would be significantly changed by their omission.

(7) Provide the technical basis for models used to represent the 10,000

years after disposal in the performance assessment, such as comparisons made with outputs of detailed process-level models and/or empirical observations (e.g., laboratory testing, field investigations, and natural analogs).

(b) The performance assessment methods used to satisfy the requirements of paragraph (a) of this section are considered sufficient for the performance assessment for the period of time after 10,000 years and through the period of geologic stability.

■ 5. In § 63.302, the definition of “period of geologic stability” is revised to read as follows:

**63.302 Definitions for Subpart L.**

\* \* \* \* \*

*Period of geologic stability* means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities. This period is defined to end at 1 million years after disposal.

\* \* \* \* \*

■ 6. Section 63.303 is revised to read as follows:

**63.303 Implementation of Subpart L.**

(a) Compliance is based upon the arithmetic mean of the projected doses from DOE's performance assessments for the period within 1 million years after disposal, with:

(1) Sections 63.311(a)(1) and 63.311(a)(2); and

(2) Sections 63.321(b)(1), 63.321(b)(2), and 63.331, if performance assessment is used to demonstrate compliance with either or both of these sections.

■ 7. Section 63.305, paragraph (c) is revised to read as follows:

**63.305 Required characteristics of the reference biosphere.**

\* \* \* \* \*

(c) DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system during the period of geologic stability, consistent with the requirements for performance assessments specified at § 63.342.

\* \* \* \* \*

■ 8. Section 63.311 is revised to read as follows:

**§ 63.311 Individual protection standard after permanent closure.**

(a) DOE must demonstrate, using performance assessment, that there is a reasonable expectation that the

reasonably maximally exposed individual receives no more than the following annual dose from releases from the undisturbed Yucca Mountain disposal system:

(1) 0.15 mSv (15 mrem) for 10,000 years following disposal; and

(2) 1.0 mSv (100 mrem) after 10,000 years, but within the period of geologic stability.

(b) DOE's performance assessment must include all potential pathways of radionuclide transport and exposure.

■ 9. Section 63.321 is revised to read as follows:

**§ 63.321 Individual protection standard for human intrusion.**

(a) DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 63.322) could occur without recognition by the drillers.

(b) DOE must demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives, as a result of the human intrusion, no more than the following annual dose:

(1) 0.15 mSv (15 mrem) for 10,000 years following disposal; and

(2) 1.0 mSv (100 mrem) after 10,000 years, but within the period of geologic stability.

(c) DOE's analysis must include all potential environmental pathways of radionuclide transport and exposure, subject to the requirements of § 63.322.

**§ 63.341 [Removed]**

■ 10. Section 63.341 is removed.

■ 11. Section 63.342 is revised to read as follows:

**§ 63.342 Limits on performance assessments.**

(a) DOE's performance assessments conducted to show compliance with §§ 63.311(a)(1), 63.321(b)(1), and 63.331 shall not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 100,000,000 per year of occurring. In addition, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurring if the results of the performance assessments would not be changed significantly in the initial 10,000-year period after disposal.

(b) For performance assessments conducted to show compliance with §§ 63.321(b)(1) and 63.331, DOE's performance assessments shall exclude the unlikely features, events, and

processes, or sequences of events and processes, i.e., those that are estimated to have less than one chance in 100,000 per year of occurring and at least one chance in 100,000,000 per year of occurring.

(c) For performance assessments conducted to show compliance with §§ 63.311(a)(2) and 63.321(b)(2), DOE's performance assessments shall project the continued effects of the features, events, and processes included in paragraph (a) of this section beyond the 10,000-year post-disposal period through the period of geologic stability. DOE must evaluate all of the features, events, or processes included in paragraph (a) of this section, and also:

(1) DOE must assess the effects of seismic and igneous activity scenarios, subject to the probability limits in paragraph (a) of this section for very unlikely features, events, and processes, or sequences of events and processes. Performance assessments conducted to show compliance with § 63.321(b)(2) are also subject to the probability limits in paragraph (b) of this section for unlikely features, events, and processes, or sequences of events and processes.

(i) The seismic analysis may be limited to the effects caused by damage to the drifts in the repository, failure of the waste packages, and changes in the elevation of the water table under Yucca Mountain (i.e., the magnitude of the water table rise under Yucca Mountain).

(ii) The igneous activity analysis may be limited to the effects of a volcanic event directly intersecting the repository. The igneous event may be limited to that causing damage to the waste packages directly, causing releases of radionuclides to the biosphere, atmosphere, or ground water.

(2) DOE must assess the effects of climate change. The climate change analysis may be limited to the effects of increased water flow through the repository as a result of climate change, and the resulting transport and release of radionuclides to the accessible environment. The nature and degree of climate change may be represented by constant-in-time climate conditions.

The analysis may commence at 10,000 years after disposal and shall extend through the period of geologic stability. The constant-in-time values to be used to represent climate change are to be the spatial average of the deep percolation rate within the area bounded by the repository footprint. The constant-in-time deep percolation rates to be used to represent climate change shall be based on a lognormal distribution with an arithmetic mean of 41 mm/year (1.6 in./year) and a standard deviation of 33 mm/year (1.3 in./year). The lognormal

distribution is to be truncated so that the deep percolation rates vary between 10 and 100 mm/year (0.39 and 3.9 in./year).

(3) DOE must assess the effects of general corrosion on engineered barriers. DOE may use a constant representative corrosion rate throughout the period of geologic stability or a distribution of corrosion rates correlated to other repository parameters.

Dated at Rockville, Maryland, this 9th day of March 2009.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. E9-5448 Filed 3-12-09; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF ENERGY

### 10 CFR Part 436

RIN 1904-AB68

#### Federal Procurement of Energy Efficient Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) today publishes a final rule to promote Federal procurement of energy-efficient products. The final rule establishes guidelines for Federal agencies regarding the implementation of amendments to the National Energy Conservation Policy Act (NECPA) that require Federal agencies to procure ENERGY STAR qualified and Federal Energy Management Program (FEMP) designated products in procurements involving energy consuming products and systems. Today's final rule includes changes in response to comments received on the notice of proposed rulemaking published June 19, 2007. Most notably, today's final rule does not establish a reporting requirement, as initially proposed, for federal agencies under procurement requirement of NECPA.

**DATES:** This rule is effective April 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical issues contact Mr. Cyrus Nasser, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, EE-2L, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9138, *e-mail:* [cyrus.nasser@ee.doe.gov](mailto:cyrus.nasser@ee.doe.gov). For legal issues contact Mr. Chris Calamita, U.S. Department of Energy,

Office of the General Counsel, Forrestal Building, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507, *e-mail:* [Christopher.Calamita@hq.doe.gov](mailto:Christopher.Calamita@hq.doe.gov).

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#### I. Introduction and Background

##### A. The Energy Policy Act of 2005

The Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109-58; August 8, 2005), amended Part 3 of title V of NECPA (42 U.S.C. 8251-8259) by adding section 553. Section 553 of NECPA requires each Federal agency to procure ENERGY STAR qualified or FEMP designated products, unless the head of the agency determines in writing that a statutory exception applies. (42 U.S.C. 8259b(b)) Section 553 of NECPA was further amended by section 525 of the Energy Independence and Security Act of 2007 (Pub. L. 110-110; December 19, 2007) to clarify that the procurement requirement applies to the procurement of a product in a category covered by the Energy Star program or the FEMP program for designated products. (42 U.S.C. 8259b(b)(1)) Further, each Federal agency is required to incorporate into the specifications of all procurements involving energy consuming products and systems, and into the factors for evaluation of offers received for such procurements, criteria for energy

efficiency that are consistent with the criteria used for rating ENERGY STAR qualified products and for rating FEMP designated products. (42 U.S.C. 8259b(b)(3))

Section 553 also requires that all inventories or listings of products operated and maintained by the General Services Administration (GSA) and the Defense Logistics Agency (DLA) clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any listing or inventory of products, and it requires GSA and DLA to supply only ENERGY STAR qualified and FEMP designated products in all covered product categories, except in cases in which the head of the agency ordering a product specifies in writing that an exception applies. (42 U.S.C. 8259b(c))

Section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated products, and it excludes a specific category of energy consuming products from coverage.

A procurement may be excepted if the head of an agency finds in writing that either: (1) An ENERGY STAR qualified product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or (2) no ENERGY STAR qualified product or FEMP designated product is reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)) In addition, section 553 excludes from the definition of products subject to these requirements any energy consuming product or system designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5))

The subsection entitled "REGULATIONS," section 553(f) of NECPA, directs the Secretary of Energy to issue guidelines to carry out the statute. (42 U.S.C. 8259b(f)) NECPA section 553 imposes procurement requirements on agencies and additional requirements on GSA and DLA. DOE does not need to issue regulations to implement those statutory requirements. Moreover, DOE does not have the authority to change by regulation the statutory procurement requirements that are applicable to agencies or the additional requirements that govern GSA and DLA.

Consistent with the direction provided in section 553(f), today's final rule amends 10 CFR part 436, Federal Energy Management and Planning Programs, to establish guidelines for Federal agencies on compliance with section 553.

### *B. ENERGY STAR Qualified and FEMP Designated Products*

In 1992, the United States Environmental Protection Agency (EPA) introduced ENERGY STAR as a voluntary labeling program designed to identify and promote energy efficient products, in part, to reduce greenhouse gas emissions.

In response to Executive Order 12902, "Energy Efficiency and Water Conservation at Federal Facilities," (59 FR 11463; March 8, 1994) twenty-two federal agencies signed an agreement in 1994 to shift their purchasing of energy-using products to the best 25% of models on the market. Products that were labeled with the ENERGY STAR logo met this requirement. The Department of Energy's Federal Energy Management Program (FEMP) provided additional guidance to Federal agencies to identify efficient products not covered by the ENERGY STAR program, i.e., FEMP designated products.

In 1999, the partnership between EPA and DOE was furthered by Executive Order 13123, "Greening the Government Through Efficient Energy Management," which directed EPA and DOE to expedite the process of designating products as ENERGY STAR qualified and to merge their efficiency rating procedures. 64 FR 30851; June 8, 1999. Executive Order 13123 was replaced with Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," which requires, among other things, that in acquisitions of goods and services Federal agencies use sustainable environmental practices, including acquisition of bio-based, environmentally preferable, energy-efficient, water-efficient, and recycled-content products. 72 FR 3919; January 26, 2007.

In EPACT 2005, Congress established statutory parameters for the ENERGY STAR program. (42 U.S.C. 6294a) The statute prescribes the program duties of the Administrator of EPA and the Secretary of Energy; requires the solicitation of public comment before an ENERGY STAR product category, specification or criterion is established or revised; and establishes a lead time before a new or significant revision of a product category, specification, or criterion may become effective.

EPACT 2005 also reaffirmed the authority of the Federal Energy Management Program to identify a product as being "among the highest 25 percent of equivalent products for energy efficiency." (42 U.S.C. 8259b(a)(4))

Currently, ENERGY STAR qualified and FEMP designated products cover 62 types of products in the following categories: (1) Lighting; (2) commercial and industrial equipment; (3) food service equipment; (4) office equipment; (5) home electronics; (6) appliances; (7) residential equipment; (8) plumbing; and (9) construction products. ENERGY STAR qualified and FEMP designated products have been determined to be life-cycle cost-effective in normal usage. However, purchasers are encouraged to evaluate products according to their specific applications and circumstances. Life-cycle cost calculators for many of the ENERGY STAR qualified and FEMP designated products can be accessed at: [http://www.eere.energy.gov/femp/procurement/eep\\_eccalculators.html](http://www.eere.energy.gov/femp/procurement/eep_eccalculators.html).

### *C. Proposed Rule*

As discussed above, NECPA section 553(f), entitled "REGULATIONS," directs DOE to issue guidelines to carry out the section. (42 U.S.C. 8259b(e)) On June 19, 2007, DOE published a notice of proposed rulemaking that proposed a reporting requirement to track agency compliance with the procurement requirements established in section 553 of NECPA. 72 FR 33696; June 19, 2007. DOE also published draft guidance to assist Federal agencies in complying with the procurement requirements established in section 553.

NECPA section 553 applies to the procurement of energy consuming products. Section 553 defines "product" as excluding energy consuming products or systems designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5)) For the purpose of the reporting requirement, the proposed rule relied on the term "covered product," i.e., a product or system that is in a category covered by the ENERGY STAR or FEMP program. Covered products are those energy consuming products that the ENERGY STAR or FEMP programs determined to hold the greatest promise for energy savings. Within these product categories, there is typically a broad range of life-cycle costs associated with the products. ENERGY STAR and FEMP identify those products with lower life-cycle costs for federal buyers. Both programs will continue to review market trends and product availability, and may determine that additional products should be added to the list of covered products.

Section 553(a)(1) specifies a definition of agency that includes an agency under any branch of the Government (including a congressional agency). (42 U.S.C. 8259b(a)(1)) The proposed rule defined "agency" consistent with the

definition contained in Title 5 of the United States Code, which essentially limits the term "agency" to those under the Executive Branch. (5 U.S.C. 551(1)) DOE initially determined that the inclusion of non-Executive Branch agencies under the definition in section 553(a)(1) of NECPA was inappropriate for a regulation promulgated by DOE given DOE's authority. 72 FR 33697. Moreover, the definition of "agency" in 5 U.S.C. 551(1) is incorporated by reference into subchapter III, Federal Energy Initiative, of Chapter 91 of Title 42 of the United States Code, which includes section 553. DOE noted that the other branches of the Government may, at their discretion, rely on DOE's regulation and guidance in implementing section 553.

As stated above, section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated products. In order to track exceptions, DOE proposed reporting requirements to track the exception findings made by agency heads. DOE initially determined that information regarding the procurement of products for which an exception was necessary would help DOE and EPA determine if there is a need for revisions to ENERGY STAR qualified or FEMP designated products. DOE has determined that existing reporting and tracking mechanisms provide an adequate means to collect and analyze information regarding agency procurement of these products.

### *D. Draft Guidance*

In the preamble to the proposed rule, DOE provided draft guidance on compliance with the procurement requirements set forth in section 553 of NECPA. As discussed previously in this document, section 553(b) requires that when agencies procure energy consuming products, either directly or through part of a larger contract (e.g., construction, renovation, and service or maintenance contracts) that they procure either an ENERGY STAR qualified product or a FEMP designated product. (42 U.S.C. 8259b(b)(1)) Section 553(c) requires GSA and DLA to clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any inventory or listing of products by these agencies and that they supply only ENERGY STAR qualified and FEMP designated products when appropriate. (42 U.S.C. 8259b(c))

DOE encourages agencies other than GSA and DLA that operate procurement ordering systems to achieve the goals of section 553.

Comments were received on the draft guidance provided in the notice of proposed rulemaking. The discussion below responds to those comments and provides guidance for Federal agencies in complying with section 553.

## II. Discussion of Comments and the Final Rule

Today's final rule contains a number of changes from the proposed rule. Most significantly, the final rule does not include a reporting requirement. The changes are discussed below.

DOE received thirteen comments in response to the notice of proposed rulemaking. The comments covered the following topics: Definition of products covered under the rule—specifically, whether a product must itself be “energy consuming” to be considered a “covered product”; reporting of exceptions granted by each agency; responsibilities of agencies to define procedures to comply with NECPA section 553 requirements; and criteria determining whether a product meets the requirement of “Energy Star-qualified or FEMP-designated.” DOE received several comments in support of the proposed rule.

### A. Definition of “Covered Product”

Several commenters raised issues concerning the definition of covered product. (See comments from Single Ply Roofing Industry, Duro-Last Roofing, Information Technology Industry Council, Chemical Fabrics & Film Association, Inc., Sika Sarnafil, Inc.) Commenters suggested that the definition of “covered product” be expanded to include all products for which an ENERGY STAR qualification or a FEMP designation is established.

Discussion of the term “product” in the preamble of the notice of proposed rulemaking was in the context of “energy consuming” products. 72 FR 33697; June 19, 2007. However, in the proposed regulatory text, “covered product” was defined more broadly as “a product that is of a category for which an ENERGY STAR qualification or FEMP designation is established.” The ENERGY STAR categories cover products that do not consume energy, such as windows and roofing materials.

DOE is maintaining the definition of “covered product” as in the proposed regulatory text. The definition of “covered product” for the purpose of the regulation includes any product that is of a category for which an ENERGY STAR qualification or FEMP designation is established. However, the statutory procurement requirements apply only to the procurement of products as set forth in section 553 of

NECPA. (42 U.S.C. 8259b) As noted above, section 553 of NECPA, as recently amended, specifies that the requirement applies to the procurement of an energy consuming product in a product category covered by the Energy Star Program or the FEMP program for designating products. (42 U.S.C. 8259b(b)(1)) The definition of “covered product” established in today's final rule clarifies that the requirements under section 553 of NECPA apply only with regard to energy consuming products that are of a product category covered by the Energy Star Program or the FEMP program for designating products.

The Information Technology Industry Council stated that it was unclear what the term “category” meant in the definition of covered product. The ENERGY STAR and FEMP programs apply to specified types of products, *i.e.*, categories. A listing of the product categories covered by the ENERGY STAR program can be found at [http://www.energystar.gov/index.cfm?fuseaction=find\\_a\\_product](http://www.energystar.gov/index.cfm?fuseaction=find_a_product).

Currently, there is no companion list of FEMP designated products, but the FEMP specifications for energy efficiency products are located at [http://www.eere.energy.gov/femp/procurement/eep\\_requirements.html](http://www.eere.energy.gov/femp/procurement/eep_requirements.html).

### B. Reporting Agency Exceptions to the Procurement Requirement

Several comments were received regarding the perceived burdens of requiring agencies to report information regarding the finding of an exception under section 553(b)(2) of NECPA. (See comments from Office of Federal Environmental Executive; Department of Justice; Department of Commerce). These commenters indicated that the reporting requirement included in the notice of proposed rulemaking would be unduly burdensome on agencies.

DOE recognizes that there are several existing reporting requirements through which DOE can obtain information on exceptions found under section 553 of NECPA, without the need to establish a separate reporting requirement through regulation. Specifically, Federal agencies are currently required to provide information for DOE's annual report on energy use and the Office of Federal Procurement Policy's annual report on green purchasing requirements. DOE will coordinate with the Office of Management and Budget to incorporate information regarding the finding of exemptions under section 553 of NECPA as part of the data collected for the these annual reports. By relying on existing reporting schemes, DOE avoids any potential redundancy in

reporting requirements for Federal agencies. Therefore, DOE is not establishing a reporting requirement in today's final rule.

### C. Compliance With Section 553

Several comments were received regarding agency compliance with the procurement requirements in section 553 of NECPA. Specifically, some of these comments requested that DOE establish regulations:

- Establishing requirements for GSA and DLA to identify energy-efficient products (comment from Alliance to Save Energy);
- Specifying how agencies are to determine the cost-effectiveness of products for the purpose of an exception finding (comments from Office of Federal Environmental Executive; Information Technologies Industry Council; and Department of Veterans Affairs); and
- Providing additional exceptions that may be available to Federal agencies (comments from Office of Federal Environmental Executive and Department of Veterans Affairs).

As stated above, DOE has determined that the procurement requirements and the product listing requirements of section 553 of NECPA are self-executing. However, today's final rule codifies the guidance provided in the preamble of the notice of proposed rulemaking and this document. Placing the guidance in the Code of Federal Regulations, agencies should be able to more readily access the guidance.

With regard to a finding under the exception provision in section 553(b)(2), each agency should develop a process for evaluating its individual product needs. In the guidance section below, DOE does provide guidance on how an agency may evaluate the cost-effectiveness of a product.

The exception provision in section 553 provides specific criteria for determining when such an exception finding can be made. Section 553 does not include provisions granting exceptions beyond those enumerated in that section. While section 553 specifies that a finding of an exception is to be made by the head of an agency, agencies may consider, as appropriate, the delegation of the exception authority to other officials within the agency.

### D. Definition of Criteria for ENERGY STAR Qualification or FEMP Designation

One comment (comment from Arkansas Lamp Manufacturing) dealt with the mechanism by which the ENERGY STAR program determines the

criteria by which ENERGY STAR qualified products are identified. This process is beyond the scope of this regulation. Moreover, as noted above, EPCACT 2005 established statutory parameters for the ENERGY STAR program. (42 U.S.C. 6294a)

Another comment (comment from Information Technology Industry Council) dealt with the distinction between a product meeting the functional requirements contained in the technical specifications for ENERGY STAR products and a product that is ENERGY STAR qualified. The language of section 553 of NECPA requires federal agencies to procure an ENERGY STAR qualified product; i.e., a product manufactured by a full participant in the ENERGY STAR program. (42 U.S.C. 8259b(1)(A)) A product must be ENERGY STAR qualified to meet the procurement requirements; functional performance alone is not sufficient.

#### *E. Supply Source for Excepted Procurement*

One comment (comment from Alliance to Save Energy) requested that DOE require the federal supply sources (GSA and DLA) to verify that customers had prepared a written exception before supplying a covered product that is not ENERGY STAR qualified or FEMP designated. As discussed above, DOE does not have the authority to change by regulation the statutory requirements that govern GSA and DLA.

### **III. DOE Guidance**

Section 533(e) of NECPA, titled "Regulations", directs DOE to issue guidelines to carry out the procurement requirements of that section. As indicated previously in this document, DOE is codifying, to the extent practical, the guidance provided in the preamble of the notice of proposed rulemaking and this document. As noted, the guidance provided in the Code of Federal Regulations, should be more readily accessible to agencies, as opposed to guidance provided only in the **Federal Register**.

#### *A. Procurements*

Requirements for Federal procurement are governed, in part, by the Federal Acquisition Regulation (FAR). (48 CFR part 1 *et seq.*) On November 23, 2007, the FAR requirements were revised to reflect the requirements in section 553 of NECPA. 72 FR 65868; Nov. 23, 2007. DOE has worked closely with members of the FAR Council to ensure a consistency between today's final rule and the recent FAR revision.

Federal agencies are generally required to procure an ENERGY STAR qualified or FEMP designated product whenever procuring a covered product. Additionally, products furnished by contractors while performing at a federally controlled facility should be qualified products regardless of whether the government receives title at the end of contract performance.

A list of product categories, which contain ENERGY STAR qualified and FEMP designed products, is located at [http://www.eere.energy.gov/femp/pdfs/eed\\_productfactsheet.pdf](http://www.eere.energy.gov/femp/pdfs/eed_productfactsheet.pdf).

To identify actual products that are ENERGY STAR rated, potential purchasers can go to <http://www.energystar.gov/products>.

Currently, there is no companion list of FEMP designated products, but the FEMP specifications for energy efficiency products are located at [http://www.eere.energy.gov/femp/procurement/eed\\_requirements.html](http://www.eere.energy.gov/femp/procurement/eed_requirements.html).

#### *B. Procurement Planning*

In addition to establishing requirements for the actual procurement of certain products, section 553(b)(3) directs heads of agencies to incorporate into the specifications for all procurements involving covered products criteria for energy efficiency that are consistent with the criteria used to rate ENERGY STAR products and FEMP designated products. (42 U.S.C. 8259b(b)(3)) This requirement applies to general specifications, project specifications, and construction, renovation and service contracts that involve the procurement of covered products. Agencies should consider this requirement to apply to:

- Design, design/build, renovation, retrofit and services contracts; facility maintenance and operations contracts; as well as energy savings performance contracts and utility energy service contracts.
- If applicable, lease agreements for buildings or equipment, including build-to-lease contracts, such as those used to implement the Military Housing Privatization Initiative.

Further, agencies should require the procurement of ENERGY STAR and FEMP designated products in new service contracts and other existing service contracts as they are recompeted and should, to the extent possible, incorporate such requirements and preferences into existing contracts as they are modified or extended through options.

As directed by section 553(b)(3), Federal agencies should include criteria for energy efficiency that are consistent with the criteria used for rating

qualified products in the factors for the evaluation of:

- Offers received for procurements involving covered products, and
- Offers received for construction, renovation, and services contracts that include provisions for covered products.

Agencies should notify their vendors of the Federal requirements for energy efficient purchasing.

Guidance is available for developing model contract language for contracts which involve covered products. Model contract language for all ENERGY STAR qualified and FEMP designated products can be found at [http://www.eere.energy.gov/femp/procurement/eed\\_modelang.html](http://www.eere.energy.gov/femp/procurement/eed_modelang.html). Moreover, there are guide specification requirements which have already been incorporated in existing specifications such as the Unified Facilities Guide Specifications, which are available at [http://www.wbdg.org/ccb/browse\\_org.php?o=70](http://www.wbdg.org/ccb/browse_org.php?o=70), and EPA's Federal Guide for Green Construction Specifications, which is available at <http://www.wbdg.org/design/greenspec.php>.

Further, FEMP offers a series of training opportunities for procurement staff that are listed at [http://www.eere.energy.gov/femp/services/training\\_catalog.html](http://www.eere.energy.gov/femp/services/training_catalog.html). New classes are periodically added to the Web site. Procurement officials are encouraged to take advantage of these training opportunities, which can provide a useful context to understand the benefits of energy efficient technologies and the innovative financing strategies available to fund them.

Although energy consuming products or systems that are designed or procured for combat or combat-related missions are not subject to the requirements of this subpart (see § 436.40 of this subpart), DOE encourages the Department of Defense to incorporate energy efficiency criteria into procurements of combat-related equipment, to the extent practicable.

#### *C. Exceptions*

As stated above, section 553 provides for exceptions to the procurement requirements. Under the statute, an agency may only procure an energy consuming product that is not an ENERGY STAR qualified or FEMP designated product if the head of the agency finds in writing that an exception applies. (42 U.S.C. 8259b(b)(2)) Under section 553(b)(2) a written exception can only be made if one of two criteria are met. (42 U.S.C. 8259b(b)(2)) The first criterion requires an agency head to find that a product is not life-cycle cost-effective in the

application for which it will be used. (42 U.S.C. 8259b(b)(2)(A)) Although ENERGY STAR qualified and FEMP designated products are life-cycle cost-effective under normal use conditions, they may not be if used in a specialized way or for very limited hours. When making a determination that a product is not life-cycle cost-effective, an agency should rely on the life-cycle cost analysis method in part 436, subpart A, of title 10 of the Code of Federal Regulations, or another method determined by the agency to be equivalent.

The second criterion requires an agency head to find that there is no ENERGY STAR qualified or FEMP designated product reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)(B))

#### IV. Regulatory Review

##### A. Executive Order 12866

Today's final rule has been determined not to be a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, Regulatory Planning and Review. (58 FR 51735; October 4, 1993).

##### B. National Environmental Policy Act

DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing a reporting requirement applicable to contracting practices for the purchase of goods and services. The rule establishes guidance for Federal agencies with regard to the requirements of section 553 to procure energy efficient products and develop procurement practices which facilitate the purchase of energy efficient products.

The rule would not establish any procurement requirements. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

As required by Executive Order 13272, "Proper Consideration of Small

Entities in Agency Rulemaking," (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990; Feb. 19, 2003. The Department has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's final rule applies only to Federal agencies. Today's final rule will not impact small entities. In addition, the final rule only facilitates Federal agency compliance with a statutory mandate to procure ENERGY STAR qualified and FEMP designated products. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. This certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

##### D. Paperwork Reduction Act

No new record keeping requirements, subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, are imposed by this final rule.

##### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments, or the private sector. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local,

or tribal governments, or to the private sector, of \$100 million or more.

Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This rule does not impose a Federal mandate on State, local, or tribal governments or the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

##### F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being.

This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

##### G. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002). DOE's guidelines were published at 67 FR 62446 (October 7, 2002).

DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

##### H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729; February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly



specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### *I. Executive Order 13132*

Executive Order 13132, "Federalism," (64 FR 43255; August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735; Mar. 14, 2000.

DOE has examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

#### *J. Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action.

A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule will not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### **V. Congressional Notification**

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **VI. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of today's final rule.

#### **List of Subjects in 10 CFR Parts 436**

Energy conservation, Federal buildings and facilities, Reporting and recordkeeping requirements, Solar energy.

Issued in Washington, DC, on March 5, 2009.

**Rita L. Wells,**

*Acting Deputy Assistant Secretary for Business Administration, Energy Efficiency and Renewable Energy.*

■ For the reasons set forth in the preamble, DOE is amending Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

#### **PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS**

■ 1. The authority citation for part 436 is revised to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8258; 42 U.S.C. 8259b.

■ 2. Subpart C is added to part 436 to read as follows:

#### **Subpart C—Agency Procurement of Energy Efficient Products**

Sec.

436.40 Purpose and scope.

436.41 Definitions.

436.42 Evaluation of Life-Cycle Cost Effectiveness

436.43 Procurement Planning.

#### **§ 436.40 Purpose and scope.**

This subpart provides guidance to promote the procurement of energy efficient products by Federal agencies and promote procurement practices which facilitate the procurement of energy efficient products, consistent with the requirements in section 553 of the National Energy Conservation Policy Act. (42 U.S.C. 8259b)

#### **§ 436.41 Definitions.**

*Agency* means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(1) The Congress, and agencies thereof;

(2) The courts of the United States;

(3) The governments of the territories or possessions of the United States; or

(4) The government of the District of Columbia.

*Covered product* means a product that is of a category for which an ENERGY STAR qualification or FEMP designation is established.

*ENERGY STAR qualified product* means a product that is rated for energy efficiency under an ENERGY STAR program established by section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a).

*FEMP designated product* means a product that is designated under the Federal Energy Management Program as being among the highest 25 percent of equivalent products for energy efficiency.

#### **§ 436.42 Evaluation of Life-Cycle Cost Effectiveness.**

For the purpose of compliance with section 553 of the National Energy Conservation Policy Act:

(a) ENERGY STAR qualified and FEMP designated products may be assumed to be life-cycle cost-effective.

(b) In making a determination that a covered product is not life-cycle cost-effective, an agency should rely on the life-cycle cost analysis method in part 436, subpart A, of title 10 of the Code of Federal Regulations.

#### **§ 436.43 Procurement planning.**

(a) Agencies should consider the procurement planning requirements of section 553 of the National Energy Conservation Policy Act as applying to:



(1) Design, design/build, renovation, retrofit and services contracts; facility maintenance and operations contracts;

(2) Energy savings performance contracts and utility energy service contracts;

(3) If applicable, lease agreements for buildings or equipment, including build-to-lease contracts;

(b) Agencies should require the procurement of ENERGY STAR and FEMP designated products in new service contracts and other existing service contracts as they are recompeted and should, to the extent possible, incorporate such requirements and preferences into existing contracts as they are modified or extended through options.

(c) Agencies should include criteria for energy efficiency that are consistent with the criteria used for rating qualified products in the factors for the evaluation of:

(1) Offers received for procurements involving covered products, and

(2) Offers received for construction, renovation, and services contracts that include provisions for covered products.

(d) Agencies should notify their vendors of the Federal requirements for energy efficient purchasing.

[FR Doc. E9-5459 Filed 3-12-09; 8:45 am]

BILLING CODE 6450-01-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 232, 239, 249, 269 and 274

[Release Nos. 33-9013, 34-59536, 39-2463, IC-28642]

### Attaching Authenticating Documents to Online Form ID Applications

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting rule and form amendments that allow applicants for EDGAR access codes using Form ID to submit their authenticating documents by attaching them to their online Form ID applications in Portable Document Format (PDF) as an alternative to submitting the documents by fax.

**DATES:** *Effective Date:* March 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Corey Jennings, Special Counsel, at (202) 551-3258, for information on legal issues, or Cecile Peters, Chief, Information Technology Office, (202) 551-3600, for information on technical issues, Division of Corporation Finance,

U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20459-3628.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments that will revise Rules 10<sup>1</sup> and 101<sup>2</sup> under Regulation S-T<sup>3</sup> and Form ID.<sup>4</sup>

### I. Background

Form ID is used to apply for access codes to file information electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval or "EDGAR" system. EDGAR access codes include a CIK (Central Index Key) number, which serves as a permanent, public filer identification number, as well as confidential security codes.

Applicants submitting Form ID applications must submit them online. They also must fax to the Commission a notarized document containing the same information as contained in the Form ID application. The additional document is called an "authenticating document." Commission staff matches applicants' online submissions with their faxed authenticating documents before approving the Form ID application and allowing applicants to generate their EDGAR access codes.<sup>5</sup>

Today, we adopt amendments that allow Form ID applicants to submit their authenticating documents as PDF attachments to their online Form ID applications. This provides an alternative method to submitting the authenticating documents by fax. The use of a PDF attachment may provide a simpler and easier method for some applicants to submit their authenticating documents. Filers can use a fillable PDF version of Form ID available on the Commission's Web site to create and print the document. For Form ID applications with the authenticating documents attached, Commission staff will no longer have to match faxed authenticating documents manually with online submissions. This alternative method should enhance the processing efficiency of these Form ID applications. The amendments do not impose any new burdens or requirements on Form ID applicants or others.

The effective date of the new rules, March 16, 2009, coincides with the effective date of our new rules requiring that Form D filings be made online, through the Internet, using the EDGAR

system.<sup>6</sup> At the time we adopted the new Form D rules, we estimated they would result in an increase of approximately 20,000, or 40%, in the number of Form ID applications that we receive annually.<sup>7</sup> Although many Form ID applicants will be applying for EDGAR access codes to make filings other than Form D filings, the increased efficiency in use of Commission staff resources will benefit all applicants. We expect adoption of the Form ID amendments should assist the staff in better managing the expected increase in Form ID applications resulting from the Form D amendments.

At the time we adopted the Form D amendments, we acknowledged concern over the burdens of the Form ID authentication process, particularly in the context of mandating Form D online filing.<sup>8</sup> We stated that we planned to consider ways to simplify the Form ID authentication process before Form D online filing became mandatory on March 16, 2009.<sup>9</sup> The Form ID amendments we adopt today address concerns over the burdens of the Form ID authentication process. They make the process simpler and easier for some applicants. We are hopeful that the increased Commission staff efficiency in processing Form ID applications with attached authenticating documents will allow Form ID applicants to get their EDGAR access codes more quickly. However, we continue to study ways to further streamline the process.

### II. Discussion of the Amendments

#### A. Optional Attachment of Authenticating Document to Online Form ID Application

We are adopting minor revisions to Regulation S-T<sup>10</sup> to allow applicants for EDGAR access codes using Form ID to attach their required authenticating document electronically as a PDF document to their online Form ID

<sup>6</sup> We adopted the rules requiring online filing of Form D information in Release No. 33-8891 (Feb. 6, 2008) [73 FR 10592 (Feb. 27, 2008)], available at <http://www.sec.gov/rules/final/2008/33-8891.pdf>.

<sup>7</sup> See *id.* at 70 [73 FR 10610]. We expect an increase because Form D filings previously were made only in paper format, and no Form ID filings were required because filers do not need EDGAR access codes to make paper filings.

<sup>8</sup> *Id.* at 58 [73 FR 10607].

<sup>9</sup> *Id.* at 59-60 [73 FR 10607-10608].

<sup>10</sup> Regulation S-T is the general regulation governing electronic filing of information with the Commission. In addition to complying with Regulation S-T, filers must submit electronic filings in accordance with the instructions in the Commission's EDGAR Filer Manual. We also are amending the EDGAR Filer Manual to reflect a Form ID filer's ability to attach a PDF copy of its authenticating document to its online Form ID application.

<sup>1</sup> 17 CFR 232.10.

<sup>2</sup> 17 CFR 232.101.

<sup>3</sup> 17 CFR 232.10 *et seq.*

<sup>4</sup> 17 CFR 239.63, 249.446, 269.7 and 274.402.

<sup>5</sup> We approved this process in Release No. 33-8410 (Apr. 21, 2004) [69 FR 22704 (Apr. 26, 2004)], available at <http://www.sec.gov/rules/final/33-8410.htm>.

application.<sup>11</sup> The authenticating document is a paper version of the online Form ID submission that has been notarized. It contains the same information, but is manually signed and witnessed by a notary public. Rule 10 of Regulation S-T currently requires that an applicant fax its authenticating document to the Commission within two days before or after submitting its online Form ID application.<sup>12</sup> The amendments revise subparagraph (b) of Rule 10 by supplementing the faxing requirement with the option of electronically attaching a PDF version of the authenticating document to an applicant's online Form ID application.<sup>13</sup> The amendments also

<sup>11</sup> Filers that previously have been assigned a CIK number are not eligible to use Form ID. This category includes filers that previously have made paper filings with the Commission, such as Form D filings since 1986 that have been assigned CIK numbers by the Commission staff. These filers need to obtain confidential security codes to file using the EDGAR system, even though they already have a CIK number. Prior paper filers that have a CIK number but need security access codes may obtain the codes by using the "Convert Paper Only Filer to Electronic Filer" function on the EDGAR Filer Management Web site at <https://www.filermanagement.edgarfiling.sec.gov> and submit their authenticating documents by fax. For details, see EDGAR Filer Manual—Volume I, available at <http://www.sec.gov/info/edgar/edmanuals.htm>.

<sup>12</sup> To assist Form ID applicants in preparing their authenticating documents, the Commission maintains a fillable PDF version of Form ID for them to use on its Web site at <http://www.sec.gov/about/forms/formid.pdf>. Using this or another version of Form ID that they may have available, applicants can choose to prepare the authenticating document, including having it notarized, before they go online to make their online Form ID submission. Upon the effectiveness of today's amendments, applicants will be able to choose to continue faxing their authenticating document or electronically attach a PDF version of the document at the time of the actual submission. If they do not have the authenticating document prepared before they make their online Form ID submission, they may print out the information they submit on the EDGAR Web site, have the printout notarized, and fax the notarized document as their authenticating document. This latter alternative avoids the necessity of entering the information twice, once on the pre-prepared authenticating document and again during the online submission itself. As noted above, however, faxing the document increases staff processing steps and likely will result in less timely assignment of EDGAR access codes.

<sup>13</sup> When we adopted the current rules, we stated that we did not believe that electronically attaching a PDF copy of the authenticating document would provide a level of assurance materially greater than having no authenticating document and that it would not provide a level of assurance as high as the fax requirement coupled with our planned human intervention and verification procedures. We also stated that it was not possible to upload a PDF attachment to an online Form ID application in our online system at that time. Release No. 33-8410, at n.31 (Apr. 21, 2004) [69 FR 22704, 27706 n.31 (Apr. 26, 2004)]. Improvements to the EDGAR system and advancements in PDF technology now make it possible to upload a PDF attachment to an online Form ID application. We have used PDF technology internally to upload and disseminate comment letters onto the EDGAR system. The

revise subparagraph (a)(1)(ix) of Rule 101 of Regulation S-T<sup>14</sup> to reflect that the authenticating document required by Rule 10(b) of Regulation S-T may be filed either by fax or electronically as an uploaded PDF attachment to an applicant's online Form ID application.<sup>15</sup>

#### B. Form ID

We are adopting minor revisions to the General Instructions to Form ID to clarify that applicants may also fulfill the authenticating document requirement of Rule 10 of Regulation S-T by electronically attaching a PDF version of the document to their online Form ID application. Currently, the instructions to Form ID follow Rule 10 of Regulation S-T, which provides that an applicant may only fax its authenticating document to the Commission within two days before or after submitting its electronic Form ID application. We are also adopting revisions to the General Instructions to Form ID to update the Commission contact information on the current form.

### III. Paperwork Reduction Act

The amendments do not impose any new "collection of information" within the meaning of the Paperwork Reduction Act of 1995, nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for Form ID filers. Compliance with the adopted amendments will be optional. The Commission previously obtained a control number from the Office of Management and Budget ("OMB") for this collection of information.<sup>16</sup>

### IV. Cost-Benefit Analysis

We expect that the adopted amendments will neither significantly benefit Form ID applicants, nor will they impose additional costs on them, since electronically attaching a PDF copy of their notarized authenticating document to their electronic Form ID application will be optional only. We expect that there will be some benefit to investors, applicants and the Commission because the optional method of transmitting the

procedures we will use to process authenticating documents attached as PDF files will be identical to our existing human intervention verification procedures. These factors have led us to conclude that attaching a PDF copy of the authenticating document provides assurance comparable to that provided by a faxed document.

<sup>14</sup> 17 CFR 232.101(a)(1).

<sup>15</sup> Rule 101(a)(1)(ix) currently provides that the authenticating document required by Rule 10(b) of Regulation S-T must be submitted by fax transmission. 17 CFR 232.101(a)(1)(ix).

<sup>16</sup> OMB Control No. 3235-0328

authenticating document required of Form ID applicants may be easier for some applicants. To the extent filers attach the authenticating document as a PDF file rather than sending a faxed document, the Commission staff will be able to avoid sorting through faxes and matching them to online Form ID applications. If many filers choose this option, we can improve the speed and accuracy of the process that leads to receipt of EDGAR access codes.

Form ID applicants that choose to transmit their authenticating documents as PDF attachments will need access to the technology that allows them to scan their notarized document and electronically attach it to their online Form ID application. Since this method is optional and a scanning feature is now quite widely available on many computer printers, and because the existing process requires access to fax transmission facilities, we do not feel applicants that choose the optional PDF attachment method will incur greater costs. Indeed, we assume filers will choose the option that is least costly.

### V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Securities Exchange Act<sup>17</sup> requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments we adopt today merely provide an optional method that allows an applicant to electronically attach a PDF copy of a notarized Form ID authenticating document to its online Form ID application. The method will be voluntary and not required. We believe the amendments will not impose a burden on competition.

Section 2(b) of the Securities Act<sup>18</sup> and Section 3(f) of the Exchange Act<sup>19</sup> require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe the amendments will have a negligible impact on efficiency, competition or capital formation.

<sup>17</sup> 15 U.S.C. 78w(a)(2).

<sup>18</sup> 15 U.S.C. 77b(b).

<sup>19</sup> 15 U.S.C. 78c(f).

## VI. Certain Findings

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>20</sup> The changes we are adopting today do not impose new burdens and merely provide an optional method for applicants to fulfill the authentication requirements of the Form ID submission process. They do not change the basic content of the form. In making these changes, we also have updated certain contact information for Commission staff in the instructions to Form ID. We therefore believe that publication for public comment is unnecessary. Accordingly, we find that publishing a proposed rulemaking notice of these amendments is likewise unnecessary.<sup>21</sup>

The APA generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.<sup>22</sup> This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.<sup>23</sup> The Commission finds good cause to make the changes to the Form ID application process effective on March 16, 2009. The changes to the Form ID application process are optional and therefore do not impose any new burdens on applicants. They are related to changes being made to our EDGAR system in expectation of March 16, 2009, when mandatory electronic filing of Form D information becomes effective and when we expect to begin experiencing a substantial increase in the number of new Form ID applications per year. We see no reason to delay the effectiveness of the amendments for 30 days after these rule changes are published in the **Federal Register**. We believe Form ID applicants, investors and the Commission should be able to enjoy the limited benefits of these changes as soon as practicable and find there is good

cause for the amendments to take effect on March 16, 2009.

## VII. Statutory Basis and Text of Rule Amendments

We are adopting the amendments to Regulation S-T and Form ID under the authority in Section 19(a)<sup>24</sup> of the Securities Act, Sections 3(b),<sup>25</sup> 13(a),<sup>26</sup> 23(a)<sup>27</sup> and 35A<sup>28</sup> of the Exchange Act, Section 319<sup>29</sup> of the Trust Indenture Act of 1939 and Sections 30<sup>30</sup> and 38<sup>31</sup> of the Investment Company Act of 1940.

### Text of Rule Amendments

#### List of Subjects in 17 CFR Parts 232, 239, 249, 269 and 274

Reporting and recordkeeping requirements, Securities.

### Text of the Rules and Amendments

■ For the reasons set forth above, we amend title 17, chapter II of the Code of Federal Regulations as follows.

## PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350.

\* \* \* \* \*

■ 2. Amend § 232.10 by revising paragraph (b) and the heading of the note following paragraph (b) to read as follows:

#### § 232.10 Application of part 232.

\* \* \* \* \*

(b) Each registrant, third party filer, or agent to whom the Commission previously has not assigned a Central Index Key (CIK) code, must, before filing on EDGAR:

(1) File electronically the information required by Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), the uniform application form for access codes to file on EDGAR, and

(2) File, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing or by faxing to (202) 504-2474 or (703) 914-4240 within two business days before or after the electronic Form ID filing, a notarized

<sup>24</sup> 15 U.S.C. 77s(a).

<sup>25</sup> 15 U.S.C. 78c(b).

<sup>26</sup> 15 U.S.C. 78m(a).

<sup>27</sup> 15 U.S.C. 78w(a).

<sup>28</sup> 15 U.S.C. 78ll.

<sup>29</sup> 15 U.S.C. 77sss.

<sup>30</sup> 15 U.S.C. 80a-29.

<sup>31</sup> 15 U.S.C. 80a-37.

document, manually signed by the applicant over the applicant's typed signature, that includes the information required to be included in the Form ID filing, confirms the authenticity of the Form ID filing and, if filed by fax after the electronic Form D filing, includes the accession number assigned to the electronic Form ID filing.

Note to § 232.10:

\* \* \* \* \*

■ 3. Amend § 232.101 by revising paragraph (a)(1)(ix) to read as follows:

#### § 232.101 Mandated electronic submissions and exceptions.

(a) \* \* \* \* \*

(1) \* \* \*

(ix) Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), except that the authenticating document required by Rule 10(b) of Regulation S-T (§ 232.10(b)) may be filed either in electronic format as an uploaded Portable Document Format (PDF) attachment to the Form ID filing or by fax as provided in that rule, and other related correspondence and supplemental information submitted after the Form ID filing shall not be submitted in electronic format;

\* \* \* \* \*

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

### PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

### PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

### PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 17. Revise the two paragraphs appearing immediately after the bullets in the General Instructions of Form ID (referenced in § 239.63, § 249.446, § 269.7 and § 274.402) to read as three paragraphs as follows:

**Note:** The text of Form ID does not and this amendment will not appear in the Code of Federal Regulations.

### Form ID

#### Uniform Application for Access Codes to File on Edgar

\* \* \* \* \*

### General Instructions

\* \* \* \* \*

An applicant must file the information required by this form in electronic format via the Commission's EDGAR Filer Management Web site.

<sup>20</sup> See 5 U.S.C. 553(b)(3)(B).

<sup>21</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or a report to Congress under the Small Business Regulatory Fairness Act. See 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>22</sup> 5 U.S.C. 553(d).

<sup>23</sup> *Id.*

Please see Regulation S–T (17 CFR Part 232) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

The applicant must complete the Form ID electronic filing by also submitting to the Commission a copy of a notarized paper “authenticating” document. The authenticating document must include the information required to be included in the Form ID filing, be manually signed by the applicant over the applicant’s typed signature, and confirm the authenticity of the Form ID filing. Applicants may fulfill the authenticating document requirement by making a copy of the applicant’s electronic Form ID filing, adding the necessary confirming language, signing it, and having the signature notarized.

If the applicant has prepared the authenticating document before making its electronic Form ID filing, it may submit the document as an uploaded Portable Document Format (PDF) attachment to the electronic filing. An applicant also may submit the authenticating document by faxing it to the Commission at (202) 504–2474 or (703) 914–4240 within two business days before or after its electronic Form ID filing. If submitted by fax after the electronic Form ID filing, the authenticating document must contain the accession number assigned to the electronic Form ID filing. If the fax is not received timely, the Form ID filing and application for access codes will not be processed, and the applicant will receive an e-mail message at the contact e-mail address included in the Form ID filing informing the applicant of the failure to process and providing further guidance. The message will state why the application was not processed.

For assistance with technical questions about electronic filing, call Filer Support at (202) 551–8900. For assistance with questions about the EDGAR rules, Division of Corporation Finance filers may call the Office of Information Technology at (202) 551–3600; and Division of Investment Management filers may call the IM EDGAR Inquiry Line at (202) 551–6989.

\* \* \* \* \*

Dated: March 9, 2009.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5377 Filed 3–12–09; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XN85

#### Fisheries of the Exclusive Economic Zone Off Alaska; Shallow–Water Species Fishery by Amendment 80 Vessels Subject to Sideboard Limits in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits in the Gulf of Alaska (GOA). This action is necessary because the first seasonal apportionment of the 2009 Pacific halibut prohibited species catch (PSC) limit specified for the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 5, 2009, through 1200 hrs, A.l.t., April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The first seasonal apportionment of the 2009 Pacific halibut PSC limit specified for the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA is 10 metric tons as established by the 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), for the period 1200 hrs, A.l.t., January 20, 2009, through 1200 hrs, A.l.t., April 1, 2009.

In accordance with § 679.20(d)(1)(vi)(C)(2), the Administrator, Alaska Region, NMFS, has determined that the first seasonal

apportionment of the 2009 Pacific halibut PSC limit specified for the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA. The species and species groups that comprise the shallow–water species fishery are pollock, Pacific cod, shallow–water flatfish, flathead sole, Atka mackerel, skates and “other species.”

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow–water species fishery by Amendment 80 vessels subject to sideboard limits using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9–5471 Filed 3–12–09; 8:45 am]

**BILLING CODE 3510–22–S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 0810141351-9087-02]****RIN 0648-XN91****Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod for American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod total allowable catch (TAC) specified for AFA trawl catcher processors in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 6, 2009, through 1200 hrs, A.l.t., April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2009 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI is 2,719 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season allowance of the 2009 Pacific cod TAC allocated to AFA trawl catcher processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 5, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-5472 Filed 3-10-09; 4:15 pm]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679****[Docket No. 09100091344-9056-02]****RIN 0648-XN92****Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area

620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 620 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 6, 2009, through 1200 hrs, A.l.t., March 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA is 4,365 metric tons (mt) as established by the 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,300 mt, and is setting aside the remaining 65 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would

delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 5, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2009.

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-5479 Filed 3-12-09; 8:45 am]  
**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 09100091344-0956-02]

RIN 0648-XN82

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area

610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 3, 2009, through 1200 hrs, A.l.t., March 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA is 3,234 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2009 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,200 mt, and is setting aside the remaining 34 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 2, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2009.

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-5485 Filed 3-12-09; 8:45 am]  
**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 74, No. 48

Friday, March 13, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005 and 1007

[Doc. Nos. AMS-DA-07-0133; AO-388-A15; AO-366-A44; DA-03-11-B]

#### Milk in the Appalachian and Southeast Marketing Areas; Order To Terminate Proceeding on Proposed Amendments to Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of proceeding.

**SUMMARY:** This action terminates a rulemaking proceeding on two proposed amendments that sought to amend the producer-handler provisions of the Appalachian and Southeast milk marketing orders. Other proposed amendments considered as part of the rulemaking proceeding were addressed in previously issued decisions.

#### FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@ams.usda.gov](mailto:gino.tosi@ams.usda.gov), mail to: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This action terminates the rulemaking proceeding concerning proposed amendments to the producer-handler provisions of the Appalachian and Southeast orders. The proposals were considered at a public hearing held February 23-26, 2004. Other proposed amendments considered at the public hearing were addressed in a partial recommended decision issued May 13, 2005, and published May 20, 2005 (70 FR 29410), and a partial final decision issued September 15, 2005, and

published September 21, 2005 (70 FR 55458). A partial final rule was published October 12, 2005 (70 FR 59221), making the amendments adopted in these decisions effective November 1, 2005.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Producer-handlers are defined as dairy farmers that process only their own milk production. These entities must be dairy farmers as a pre-condition to operating processing plants as producer-handlers. The size of the dairy farm determines the production level of the operation and is the controlling factor in the capacity of the processing plant and possible sales volume associated with the producer-handler entity. Determining whether a producer-handler is considered a small or large business must depend on its capacity as a dairy farm where a producer-handler with annual gross revenue in excess of \$750,000 is considered a large business.

During February 2004, the month the hearing was held, the milk of 7,311 dairy farmers was pooled on the Appalachian (Order 5) and Southeast (Order 7) milk orders (3,395 Order 5

dairy farmers and 3,916 Order 7 dairy farmers). Of the total, 3,252 dairy farmers (or 96 percent) and 3,764 dairy farmers (or 96 percent) were considered small businesses on the Appalachian and Southeast orders, respectively.

During February 2004, there were a total of 36 plants associated with the Appalachian order (25 fully regulated plants, 7 partially regulated plants, 1 producer-handler, and 3 exempt plants) and a total of 51 plants associated with the Southeast order (32 fully regulated plants, 6 partially regulated plants, and 13 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 13 (or 36 percent) and 13 (or 25 percent), respectively.

Two proposals that would amend the producer-handler provisions of the Appalachian and Southeast orders were considered at the public hearing. A proposal published in the hearing notice as Proposal 7 sought to apply the pooling and pricing provisions of the Southeast or Appalachian orders to producer-handlers with more than 3 million pounds of fluid route disposition during the month. A dairy farmer who is a producer-handler with fluid route disposition above the proposed 3-million pounds per month threshold would be considered a "large" business.

A second proposal published in the hearing notice as Proposal 8 sought to allow producer-handlers to purchase a limited amount of supplemental milk without losing their status as producer-handlers. As proposed, a producer-handler would be allowed to purchase up to 10 percent of the producer's monthly milk production during the months of December through May, and 30 percent during the months of June through November from other sources.

Because this action terminates the rulemaking proceeding without amending the existing rules applicable to producer-handlers in the Appalachian and Southeast orders, the economic conditions of small entities remain unchanged. This action does not change reporting, record keeping, or other compliance requirements.

#### Prior documents in this proceeding:

*Notice of Hearing:* Issued January 16, 2004; published January 23, 2004 (69 FR 3278).

#### Partial Recommended Decision:

Issued May 13, 2005; published May 20, 2005 (70 FR 29410).



*Partial Final Decision:* Issued September 15, 2005; published September 21, 2005 (70 FR 55458).

*Partial Final Rule:* Issued October 7, 2005; published October 12, 2005 (70 FR 59221).

### Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), at Atlanta, Georgia, on February 23–26, 2004, pursuant to a notice of hearing issued January 16, 2004, and published in the **Federal Register** on January 20, 2004 (69 FR 3278).

### Producer-Handler Provisions

This action terminates the rulemaking proceeding concerning proposed amendments to the producer-handler provisions of the Appalachian and Southeast orders. A proposal published in the hearing notice as Proposal 7 sought to apply the Appalachian and Southeast orders' pooling and pricing provisions to producer-handlers with fluid route disposition in excess of 3 million pounds per month. A second proposal, published in the hearing notice as Proposal 8, sought to allow producer-handlers to purchase up to 10 percent of the producer's monthly milk production during December through May and 30 percent during June through November from other sources.

The Appalachian and the Southeast milk orders provide identical definitions that describe and define a category of handlers known as producer-handlers. Both orders require producer-handlers to operate their businesses at their own enterprise and risk, meaning that the care and management of the dairy animals and other resources necessary for the production, processing, and distribution of fluid milk products are the sole responsibility of the handler.

The Appalachian and Southeast orders prohibit producer-handlers from purchasing any amount of supplemental milk from pool sources or from any other source. Producer-handlers bear the entire burden of balancing their own milk production. Any fluctuation in a producer-handler's daily and seasonal milk needs must be met through their own farm production and any excess

milk supplies must be disposed of at their own expense.

Producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders. Exemption from the pooling and pricing provisions of the orders means that the minimum class prices established under the orders that handlers must pay for milk are not applicable to producer-handlers, and producer-handlers receive no minimum price protection for their milk production not disposed of for fluid uses.

While producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders, they are required to submit reports to the Market Administrator who monitors producer-handler operations to ensure that they are in compliance with the conditions for such exemption status.

The Secretary is in the process of receiving proposals to initiate a new rulemaking proceeding to consider the elimination of the producer-handler provision in all Federal milk marketing orders. Two such proposals have been received and the Secretary has invited the submission of additional proposals. Such proposals must be received by Dairy Programs by March 16, 2009. (See Dairy Programs Web site at <http://www.ams.usda.gov/dairy>.)

Given this development and the substance of the two proposals considered herein, the review of the producer-handler exemption under all Federal milk marketing orders would be a more comprehensive review. Therefore, the Secretary has determined that this rulemaking proceeding should be terminated.

### Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the Appalachian and Southeast orders regarding the regulation of producer-handlers should be and is hereby terminated.

### List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

The authority citation for 7 CFR Parts 1005 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

Dated: March 9, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9–5414 Filed 3–12–09; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 320

**RIN 3084-AA99**

### Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Supplemental notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain mandatory disclosures for depository institutions that lack federal deposit insurance. On March 16, 2005, the Commission published a notice of proposed rulemaking (NPRM) seeking comment on disclosure rules for such institutions. Subsequently, Congress passed the Financial Services Regulatory Relief Act of 2006 (FSRRA), which amended FDICIA's requirements. To ensure that the FTC's requirements are consistent with the FSRRA amendments, the Commission is seeking comment on conforming changes to the proposed Rule.

**DATES:** Written comments must be received on or before June 5, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014” to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number; or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secrets and commercial or financial information obtained from a



person and privileged or confidential . . .,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).<sup>1</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-fdiciasupp>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<https://secure.commentworks.com/ftc-fdiciasupp>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex A), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic

form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In 1991, as part of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Congress directed the Commission to prescribe certain disclosures for depository institutions lacking federal deposit insurance. Although FDICIA was enacted in 1991, Congress prohibited the FTC from spending resources on FDICIA’s disclosure requirements until 2003. After Congress lifted that ban, the Commission published proposed disclosures consistent with FDICIA’s statutory directives (70 FR 12823 (March 16, 2005)). In response, many commenters raised concerns with the proposal.<sup>2</sup> Thereafter, Congress passed the Financial Services Regulatory Relief Act of 2006 (FSRRA) (Pub. L. 109-351) amending FDICIA. The FSRRA amendments addressed almost all of the concerns raised by commenters with the FTC’s proposed Rule.

While the FSRRA amendments contained some modifications to the requirements, they did not alter significantly the basic statutory obligations for affected institutions. It is important to note that FDICIA’s disclosure requirements apply regardless of the status of FTC’s regulations in this area. Accordingly, institutions lacking federal deposit insurance must comply with the law’s disclosure requirements now.

To conform with the FSRRA amendments, the Commission now publishes revised proposed Rule provisions. Section II of this Notice describes these proposed provisions in detail. Before addressing the FTC’s

proposed Rule provisions, the following discussion provides background about federal deposit insurance, institutions that lack such insurance, statutory disclosure requirements for such institutions, the FTC’s role in this area, and the changes to the law effected by the FSRRA amendments.

Under existing law, all federally-chartered and most state-chartered depository institutions must have federal deposit insurance. Federal deposit insurance funds currently guarantee all deposits at federally insured institutions up to and including \$250,000 per depositor.<sup>3</sup> Federally insured banks and credit unions must display signs disclosing this guarantee at each station or window where insured deposits are normally received in the depository institution’s principal place of business and in all its branches.<sup>4</sup>

Although the vast majority of depository institutions have federal deposit insurance, there are some exceptions. For example, the Puerto Rican government provides deposit insurance for non-federal credit unions located in Puerto Rico. In addition, approximately 200 state-chartered credit unions in approximately eight states do not have federal deposit insurance, and seek to protect their customers through private deposit insurance.<sup>5</sup>

In response to incidents affecting the safety of deposits at certain financial institutions lacking federal deposit insurance, Congress amended the Federal Deposit Insurance Act (FDIA) in 1991 adding Section 43 (12 U.S.C. 1831t), which imposes several requirements on non-federally insured institutions<sup>6</sup> and private deposit

<sup>3</sup> On October 3, 2008, the enactment of the Emergency Economic Stabilization Act of 2008 temporarily raised the basic limit on federal deposit insurance coverage from \$100,000 to \$250,000 per depositor. The legislation provides that the basic deposit insurance limit will return to \$100,000 after December 31, 2009.

<sup>4</sup> See 12 CFR Part 328 and 12 CFR Part 740.

<sup>5</sup> According to the U.S. Government Accountability Office (GAO), eight states have credit unions that purchase private deposit insurance in lieu of federal insurance. Other states either require federal insurance or allow private insurance but do not have any privately insured credit unions. GAO also identified two institutions that have no federal or private insurance. “Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions,” GAO-03-971 (Aug. 2003), 6-7. In addition, the Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

<sup>6</sup> “Depository institutions” lacking federal insurance include credit unions, banks, and savings associations that are not either: a) insured depository institutions as defined under the FDIA; or b) insured credit unions as defined in Section 101 of the Federal Credit Union Act (FCUA) (12 U.S.C. 1752). The FDIA defines “insured depository

<sup>1</sup> FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

<sup>2</sup> See (<http://www.ftc.gov/os/comments/FDICIA/index.shtm>).

insurers.<sup>7</sup> In general, Section 43(b), as amended by FSRRA, mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers.<sup>8</sup> Specifically, in all periodic statements, signature cards, passbooks, and share certificates, the institution must disclose that it does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back (hereinafter “required long disclosure”). Moreover, in most advertising and at deposit windows, principal places of business, and branches, the institution must disclose that it is not federally insured (hereinafter “required short disclosure”).<sup>9</sup>

For many years after FDICIA’s passage, Congress prohibited the Commission from using FTC resources to enforce the law’s requirements. In 2003, Congress lifted this prohibition for certain provisions of FDICIA, including the disclosure provisions of Section 43.<sup>10</sup> Subsequently, the Commission published an NPRM seeking comments on its proposed implementation of Section 43 (70 FR 12823 (March 16, 2005)). In response, the Commission received numerous comments raising serious concerns with the proposal, and, therefore, indirectly with Section 43. In October 2006, Congress substantially addressed these concerns by amending Section 43 as part of FSRRA. These new amendments rendered significant

portions of the Commission’s proposed Rule obsolete.

Accordingly, the Commission now proposes modifications to its proposed Rule and seeks comments on these changes. The FSRRA amendments did not alter the basic content of the required disclosures. Section 43 continues to require depository institutions lacking federal deposit insurance affirmatively to disclose that fact to their depositors or members. (12 U.S.C. 1831t(b)). The FSRRA amendments did, however, amend the law to: (1) significantly alter Section 43(b)(3) (12 U.S.C. 1831t(b)(3)), which requires institutions to obtain signed acknowledgments from depositors related to the lack of federal deposit insurance; (2) establish specific exemptions to the advertising disclosure requirements; (3) modify the requirements for disclosures on periodic statements and account records and at depository locations; and (4) limit some of the FTC’s authority under the law and provide state regulators with specific enforcement authority. These four changes are discussed in detail as follows.

First, the FSRRA amendments significantly change the signed acknowledgement requirements of the law, an issue of concern to many commenters. Specifically, the amendments allow institutions under certain circumstances to provide notice to depositors in lieu of obtaining signed acknowledgments.<sup>11</sup> For example, the law previously required institutions to obtain signed acknowledgments from all customers who became depositors after 1994. Under the amended law, institutions must obtain signed acknowledgments from anyone who becomes a depositor after the effective date of FSRRA (October 13, 2006), except for those who become depositors through the conversion of a federally insured institution to a non-federally insured institution or through the merger of a federally insured institution with a non-federally insured institution. For depositors obtained through a conversion or merger after October 13, 2006, the institution may obtain the depositor’s signed acknowledgement, or make an attempt to obtain such an acknowledgment, by sending the consumer a card with the required long disclosure, a signature line, and instructions for returning the card to the institution. For current depositors (*i.e.*, those who became depositors before

October 13, 2006 and have not submitted an acknowledgement), the institution either must obtain a signed acknowledgement, or make two attempts to obtain such a signed acknowledgement, by transmitting the above described card to the depositor.

Second, the FSRRA amendments contain specific exemptions to the law’s disclosure requirements for advertising. In particular, the required short disclosure (that the institution is not federally insured) need not appear in any “sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution’s products or services or information otherwise promoting the institution.” The law also exempts from the disclosure requirement “[s]mall utilitarian items [*e.g.*, common pens and key chains] that do not mention deposit products or insurance if inclusion of the notice would be impractical.” (12 U.S.C. 1831t(b)(2)(B)).

Third, the FSRRA amendments alter the disclosure requirements for periodic statements, account records, and depository locations. Before the amendments, Section 43(b)(1) required the long disclosure on “all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit.” The amended provision eliminates the reference to “similar instrument evidencing a deposit” and replaces it with “share certificate.” In addition, before the FSRRA amendments, the statute required such notices “at each place where deposits are normally received.” The FSRRA amendments changed the law to require affected institutions to clearly and conspicuously disclose that the institution is not federally insured “at each station or window place where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page . . .” (12 U.S.C. 1831t(b)(2)(A)).

Finally, the FSRRA amendments eliminate the “shut-down” provision of the law<sup>12</sup> and limit the FTC’s authority

institution” as any bank or savings association the deposits of which are insured by the FDIC pursuant to this chapter (12 U.S.C. 1813(c)). The FCUA defines “insured credit union” to mean “any credit union the member accounts of which are insured by the National Credit Union Administration.” (12 U.S.C. 1752).

<sup>7</sup> Congress passed these amendments as part of FDICIA. See Pub. L. No. 102-242, 105 Stat. 2236 (1991) (Section 151 of FDICIA, Subtitle F of Title 1, S. 543). Section 43 was initially designated as Section 40 of the FDIA. See also S. Rep. No. 167, 102 Cong., 1st Sess., at 61 (1992).

<sup>8</sup> The definition of “depository institution” in Section 43(f)(2) also includes any entity that, as determined by the FTC, engages in the business of receiving deposits and could reasonably be mistaken for a depository institution by the entity’s current or prospective customers (*i.e.*, “look-alike” institutions). The Commission has not identified any “look-alike” institutions to date and does not plan to address the issue in this proceeding. If, in the future, the Commission or commenters identify “look-alike” institutions of concern that are not subject to existing legal requirements, the FTC may consider whether to develop requirements for such entities.

<sup>9</sup> 12 U.S.C. 1831t(b).

<sup>10</sup> Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108-401, Cong., 1st Sess., at 88 (2003).

<sup>11</sup> The acknowledgments and notices must indicate that the institution is not federally insured and that the federal government does not guarantee that depositors will recover their money if the institution fails (see Section 43(b)(3)).

<sup>12</sup> The “shut-down” provision, formerly Section 43(e), prohibited depository institutions lacking federal deposit insurance from using the mails or other instrumentalities of interstate commerce to facilitate depository activities unless the appropriate state supervisor had determined that the institution met eligibility requirements for such insurance.

to the promulgation of regulations and the enforcement of the law's disclosure requirements (12 U.S.C. 1831t(b), (c), & (e)). The amendments also provide state regulators with broad authority to enforce all provisions of Section 43, as amended (*see* 13 U.S.C. 1831(f)(2)).

## II. Proposed Amendments and Comment Analysis

The disclosure requirements in Section 43, as amended by FSRRA, currently apply to covered institutions. As directed by Section 43,<sup>13</sup> however, the Commission plans to issue regulations that track those statutory disclosure requirements. As part of that effort and to conform the proposed Rule to the FSRRA amendments, we seek comment on changes to the proposed Rule published on March 16, 2005 (70 FR 12823).<sup>14</sup> Specifically, the changes address disclosure requirements for periodic statements and account records, advertising, and locations that receive deposits; signed acknowledgment requirements; and an exception to these requirements for certain depository institutions. Three sections of the revised proposed Rule simply adopt FSRRA's new provisions relating to signed acknowledgments (Section 320.5); the specific advertising disclosure exemptions (Section 320.4); and the disclosure requirements applicable to periodic statements and account records and depository locations (Sections 320.3 and 320.4).<sup>15</sup> There are, however, a few rule revisions that require further explanation, specifically, which depository locations are covered by the Rule, the proposed exceptions for institutions not receiving retail deposits, and the format and size requirements for disclosures.

### A. Depository Locations - ATMs, Service Centers, and Shared Facilities

**Issue and Comments:** The Commission's 2005 proposed Rule would have required disclosures regarding the lack of federal deposit insurance at each location "where the depository institution's account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit

union or institution." Many credit unions commented that the disclosures should not be required at shared facilities and service centers. They explained that, among other things, postings required by the National Credit Union Administration (NCUA) alert consumers that some participating institutions are federally insured and that others are not (presumably because the absence of NCUA postings for a particular institution will imply that the institution lacks federal insurance).<sup>16</sup> Additionally, American Share Insurance (ASI) (#146) suggested that the FTC may not have jurisdiction over the shared facilities because some of these facilities are housed in federally insured institutions and are not owned or operated by the privately insured institutions subject to FDICIA's disclosure requirements. On the other hand, some comments<sup>17</sup> urged the Commission to require signage at shared branch locations disclosing the names of all non-federally insured institutions operating on the premises. Finally, the American Bankers Association (#2) urged the FTC to adopt the definition of service facility in NCUA's regulations, presumably to provide consistency in the application of the disclosure requirements.<sup>18</sup>

**Discussion:** Pursuant to the FSRRA amendments, the revised proposed Rule (Section 320.4) would require covered depository institutions to place the short disclosure "at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page . . ." This proposed provision simply restates the language of Section 43, as amended. Accordingly, the revised proposed Rule would require disclosures at credit union centers and service centers to the extent they contain stations or windows "where deposits are normally received." The statutory language does not give the FTC the flexibility to exempt such locations from the requirement to disclose that the institution is not federally insured. We do not expect that such a disclosure at shared facilities would cause confusion or contradict existing

disclosures required by the NCUA. To the contrary, it would appear the FDICIA disclosure, coupled with the NCUA disclosures, would help to clarify which participating institutions are federally insured and which are not. In addition, the fact that the shared facility itself may not be owned by the uninsured or privately insured institution or may not be subject to FTC jurisdiction does not control the ability of the institution itself to ensure that the disclosures are made. For example, depository institutions could arrange for the posting of the required disclosure through their contract with the shared facility.

### B. Exceptions For Institutions Not Receiving Retail Deposits

**Issue:** Section 43(d) of the FDIA ("Exceptions for institutions not receiving retail deposits") provided the Commission with discretion to except certain institutions from the disclosure requirements, specifically, depository institutions that do not receive initial deposits of less than \$100,000 from individuals who are citizens or residents of the U.S. (other "than money received in connection with any draft or similar instrument issued to transmit money"). The Commission's 2005 proposed Rule contained such an exception.<sup>19</sup> In proposing the provision, the Commission reasoned that customers of institutions that handle only initial deposits of \$100,000 or more are sufficiently sophisticated that they do not need the same disclosures as other customers.

**Comments:** In response to the Commission's 2005 proposed Rule, the National Association of Federal Credit Unions (NAFCU) (#121) and the Greater Cincinnati Credit Union (#81) opposed the proposed exception. According to NAFCU, some customers with initial deposits over the standard maximum insurance amount at federal credit unions do not understand how their funds are insured. Also, NAFCU expressed concern that consumers making an initial deposit of more than \$100,000 at institutions covered by the exception may mistakenly assume that the first \$100,000 is federally insured. Conversely, the Navy Federal Credit Union (#83) supported the proposed exception.

Finally, the Comptroller of the Currency (OCC) (#201) urged the Commission to except from the disclosure requirements uninsured

<sup>13</sup> 12 U.S.C. 1831t(c) & (d).

<sup>14</sup> The Commission does not propose to revise Sections 320.1 (Scope); 320.2 (Definitions); 320.6 (Exception for Certain Depository Institutions); and 320.7 (Enforcement) of the 2005 proposed Rule.

<sup>15</sup> These particular FSRRA amendments, summarized in Section I of this Notice, and the revised proposed Rule provisions that relate to them, are straightforward and do not warrant additional discussion here.

<sup>16</sup> *See, e.g.*, California and Nevada Credit Union League (#128); Greater Cincinnati Credit Union (#81); and Elkhart County Bureau Credit Union (#123). *See* (<http://www.ftc.gov/os/comments/FDICIA/index.shtml>).

<sup>17</sup> North Shore Gas Credit Union (#105) and America's Community Bankers (#130).

<sup>18</sup> NCUA defines "service facility" as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed. *See, e.g.*, 71 FR 36667 (June 28, 2006).

<sup>19</sup> *See* 70 FR 12823, 12825 (March 16, 2005). The statute indicates that the FTC should not consider "money received in connection with any draft or similar instrument issued to transmit money" to be a deposit for the purposes of this exemption.

federally-chartered branches of foreign banks in the U.S. and uninsured national trust banks. The OCC explained that the proposed disclosure requirements substantially overlap with existing FDIC and OCC disclosure regulations for Federal branches of foreign banks and that Congress “evidenced no focused or express concern” about such institutions.<sup>20</sup>

*Discussion:* In 2006, Congress amended the exception language in the statute by changing the threshold from “\$100,000” to “an amount equal to the standard maximum deposit insurance amount.”<sup>21</sup> The Commission’s new proposal tracks the 2006 amendment and identifies the threshold as the “standard maximum insurance amount.” The proposed Rule also defines that term to mean the maximum amount of deposit insurance as determined under Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)). As discussed earlier, the threshold is currently set at \$250,000.

Because the few comments received were not in agreement on the exception issue, the Commission seeks further comment on whether such an exception is appropriate. Among other things, we are interested in information about whether persons who make deposits of more than the standard maximum deposit insurance amount understand the insurance coverage associated with their deposit.

With regard to OCC’s concerns about Federal branches of foreign banks, we have identified no specific basis in the statute to except institutions that otherwise meet the definition of a depository institution “lacking Federal deposit insurance” as established by Congress in Section 43(e)(3) (12 U.S.C. 1831t(e)(3)) other than the non-retail deposit exception proposed at § 320.6.<sup>22</sup>

<sup>20</sup> OCC also indicated that national trust banks do not meet the definition of depository institution in the proposed Rule because they do not “receive or hold” deposits and that such institutions would fall under the FTC’s proposed exceptions for certain depository institutions that do not receive initial deposits of less than \$100,000.

<sup>21</sup> Public Law 109-173 (Feb. 26, 2006). The statute now reads: “The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) of this section for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.” 12 U.S.C. 1831t.

<sup>22</sup> Based on information provided by OCC in its comment, uninsured national trust banks would not have to follow the disclosure requirements because they fall under the FTC’s proposed exception (i.e., they “do not receive initial deposits of less than the standard maximum deposit insurance amount”).

### C. Format and Type Size Requirements

*Issue and Discussion:* Consistent with the FSRRA amendments, Section 320.4(b) of the proposed Rule directs institutions to present the required disclosures “in such format and in such type size and manner as to be simple and easy to understand.” The Commission has considered proposing prescriptive requirements to implement this provision such as specific rules for disclosure location and font size. Given the likely variation in the types and sizes of advertisements, however, the development of useful, comprehensive, prescriptive requirements appears unworkable. In addition, prescriptive requirements would deny institutions the flexibility to make disclosures in the most effective and efficient way.<sup>23</sup> Finally, prescriptive requirements could result in depository institutions incurring greater costs than necessary to make effective disclosures. Therefore, the Commission is not proposing prescriptive requirements related to the size and format of the required disclosures.

### III. Invitation to Comment

The Commission seeks comments on all aspects of the supplemental notice of proposed rulemaking. All comments should be filed as prescribed in the “ADDRESSES” section above, and must be received on or before June 5, 2009. In addition to the questions and requests for comment found throughout this Notice, we also ask that commenters address the following questions:

(1) What costs or burdens, or other impacts, do the proposed requirements create, and on whom? What evidence supports the asserted costs, burdens, or other impacts? Please submit any such evidence.

(2) What modifications, if any, consistent with current law, should the Commission make to the proposed requirements to increase their benefits to consumers?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular, small businesses?

<sup>23</sup> For general guidance on clear and conspicuous disclosures, see, e.g., “Dot Com Disclosures: Information about Online Advertising,” Federal Trade Commission, (<http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/>).

(3) What modifications, if any, should be made to the proposed requirements to decrease their burdens on businesses?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular, small businesses?

### IV. Paperwork Reduction Act

The proposed disclosures and written acknowledgment statements do not constitute a “collection of information” under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because they are a “public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public” as indicated in Office of Management and Budget regulations.<sup>24</sup>

### V. Regulatory Flexibility Act

For information regarding the Commission’s Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, commenters should refer to the Commission’s March 16, 2005 NPRM (70 FR 12823).

### VI. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner’s advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

### VII. Proposed Rule Language

#### List of Subjects in 16 CFR Part 320

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

■ For the reasons stated in the preamble, the Federal Trade Commission proposes to add Part 320 to 16 CFR chapter I, subchapter C as set forth below:

#### PART 320—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE

320.1 Scope

320.2 Definitions

320.3 Disclosures in periodic statements and account records

<sup>24</sup> 5 CFR 1320.3(c)(2).

- 320.4 Disclosures in advertising and on the premises
- 320.5 Disclosure acknowledgment
- 320.6 Exception for certain depository institutions
- 320.7 Enforcement

**Authority:** 12 U.S.C. 1831t; 15 U.S.C. 41 *et seq.*

### **§ 320.1 Scope.**

This part applies to all depository institutions lacking federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of federal deposit insurance.

### **§ 320.2 Definitions.**

(a) *Lacking federal deposit insurance* means the depository institution is not an insured depository institution as defined in 12 U.S.C. 1813(c)(2), or is not an insured credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(b) *Depository institution* means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to federal credit unions.

(c) *Standard maximum deposit insurance amount* means the maximum amount of deposit insurance as determined under Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(a)(1)).

### **§ 320.3 Disclosures in periodic statements and account records.**

Depository institutions lacking federal deposit insurance must include in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money. For example, a notice would comply with the requirement if it conspicuously stated the following: "[Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back." The disclosures required by this section must be clear and conspicuous

and presented in such format and in such type size and manner as to be simple and easy to understand.

### **§ 320.4 Disclosures in advertising and on the premises.**

(a) *Required Disclosures.* Depository institutions lacking federal deposit insurance must include clearly and conspicuously a notice disclosing that the institution is not federally insured:

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page; and

(2) In all advertisements except as provided in subsection (c).

(b) *Format and Type Size.* The disclosures required by this section must be clear and conspicuous and presented in such format and in such type size and manner as to be simple and easy to understand.

(c) *Exceptions.* The following need not include a notice that the institution is not federally insured:

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

### **§ 320.5 Disclosure acknowledgment.**

(a) *New Depositors Obtained Other Than Through a Conversion or Merger.* With respect to any depositor who was not a depositor at the depository institution before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, any depository institution lacking federal deposit insurance may receive any deposit for the account of such depositor only if the institution has obtained the depositor's signed written acknowledgment that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(b) *New Depositors Obtained Through a Conversion or Merger.* With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after October

13, 2006, any depository institution lacking federal deposit insurance may receive any deposit for the account of such depositor only if:

(1) The institution has obtained the depositor's signed written acknowledgment described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgment described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (a)(2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(c) *Current Depositors.* Any depository institution lacking federal deposit insurance may receive any deposit after October 13, 2006 for the account of any depositor who was a depositor on that date only if:

(1) The depositor has signed a written acknowledgment described in paragraph (a) of this section; or

(2) The institution has transmitted to each depositor who was a depositor before October 13, 2006, and has not signed a written acknowledgment described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (a)(2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

Note to paragraph (c): The institution must make the transmission described in paragraph (c)(2) of this section via mail not later than three months after October 13, 2006 and must make a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(2), if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1) of this section which has been signed by the depositor.

(d) *Format and Type Size.* The disclosures required by this section must be clear and conspicuous and

presented in such format and in such type size and manner as to be simple and easy to understand.

#### **§ 320.6 Exception for certain depository institutions.**

The requirements of this part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

#### **§ 320.7 Enforcement.**

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,  
Secretary,

[FR Doc. E9-5305 Filed 3-12-09; 8:45 am]

BILLING CODE 6750-01-S

## **DEPARTMENT OF HOMELAND SECURITY**

### **Bureau of Customs and Border Protection**

## **DEPARTMENT OF THE TREASURY**

### **19 CFR Part 10**

[USCBP-2008-0105]

RIN 1505-AC07

### **Cost or Value of Foreign Repairs, Alterations, or Processing**

**AGENCIES:** Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the U.S. Customs and Border Protection (CBP) Regulations to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported from the United States and returned under subheading 9802.00.40, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS), the value of U.S.-origin parts used in the foreign repairs, alterations, or processing. The proposed changes would provide an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under the above-referenced HTSUS provisions.

**DATES:** Comments must be received on or before May 12, 2009.

**ADDRESSES:** You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-0105.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Regulations and Rulings, Office of International Trade, 202-325-0038.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. *See ADDRESSES* above for information on how to submit comments.

## **Background**

Subheadings 9802.00.40 and 9802.00.50, HTSUS, provide a partial duty exemption for articles returned to the United States after having been exported to be advanced in value or improved in condition by repairs or alterations. Subheading 9802.00.40 encompasses articles repaired or altered abroad pursuant to a warranty, while subheading 9802.00.50 encompasses articles repaired or altered abroad other than pursuant to a warranty. Articles entitled to classification under these tariff provisions are assessed duty based upon the value of the repairs or alterations.

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for articles of metal manufactured in the United States that are exported for further processing and then returned to the United States for further processing. Articles entitled to classification under this tariff provision are assessed duty based upon the value of the processing performed outside the United States.

U.S. Note 3(a), subchapter II, Chapter 98, HTSUS, states, in pertinent part, that for purposes of subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS, the “value of repairs, alterations, processing or other change in condition outside the United States” is the cost to the importer of such change, or if no charge is made, the value of such change. Section 10.8 of the CBP regulations (19 CFR 10.8), which implements subheadings 9802.00.40 and 9802.00.50, provides in paragraph (d) that the “cost or value of repairs or alterations” is limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but will not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

Similarly, § 10.9 of the CBP regulations (19 CFR 10.9(d)), which implements subheading 9802.00.60, provides in paragraph (d) that the “cost or value of processing” is limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing, but will not include the exported U.S. metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

The words “which will include all domestic and foreign articles furnished for the repairs or alterations” in § 10.8(d) and the words “which will include all domestic and foreign articles used in the processing” in § 10.9(d) were added to those regulatory provisions by T.D. 72–119, which was published in the **Federal Register** on May 2, 1972 (37 FR 8867). Neither T.D. 72–119 nor the notice of proposed rulemaking (published in the **Federal Register** on May 4, 1971 (36 FR 8312)) which preceded the T.D. included any explanation or discussion regarding the above-referenced language added to §§ 10.8(d) and 10.9(d). However, the addition of this language has had the effect of requiring the value of U.S.- and foreign-origin parts used in the foreign repairs, alterations, or processing to be included in the dutiable value of articles entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, HTSUS.

#### Explanation of Amendments

As indicated in the above background discussion, there is nothing in the underlying statutory provisions (subheadings 9802.00.40, 9802.00.50, and 9802.00.60 and U.S. Note 3(a), subchapter II, Chapter 98, HTSUS) that mandates the inclusion of the value of U.S.-origin parts in the dutiable value of articles entered under these tariff provisions. The policy of requiring the value of U.S.-origin parts to be included in dutiable value under these circumstances, as reflected in the implementing regulations, clearly provides no incentive to use U.S., as opposed to foreign, parts in the foreign repairs, alterations, or processing. In order to encourage the use of U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under subheading 9802.00.40, 9802.00.50, and 9802.00.60, CBP is proposing to amend §§ 10.8(d) and 10.9(d) by removing the words “domestic and” in the second sentence of each of these regulatory provisions.

This document also proposes to edit §§ 10.8(d) and 10.9(d) by replacing the word “shall” each place it appears with the word “will”.

#### The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed rule would have the effect of excluding the value of U.S.-origin parts from the dutiable value of articles entered under subheadings 9802.00.40,

9802.00.50, and 9802.00.60, HTSUS, thereby providing an incentive to use U.S.-origin parts in the foreign repairs, alterations, or processing of articles entered under these HTSUS provisions. As a result, it is expected that the proposed amendments will have the potential of providing a slight economic benefit for U.S. commercial interests. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

#### Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

#### List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference Programs, Reporting and recordkeeping requirements, Shipments.

#### Proposed Amendments to the Regulations

It is proposed to amend part 10 of the CBP Regulations (19 CFR part 10) as set forth below.

#### PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

\* \* \* \* \*

#### § 10.8 [Amended]

2. In § 10.8, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the words “domestic and” in the second sentence.

#### § 10.9 [Amended]

3. In § 10.9, paragraph (d) is amended by removing the word “shall” each place it appears and adding, in its place, the word “will”, and by removing the

words “domestic and” in the second sentence.

**Jayson P. Ahern,**

*Acting Commissioner, Customs and Border Protection.*

Approved: March 10, 2009.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E9–5481 Filed 3–12–09; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2009–0073]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Perquimans River, Hertford, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of the US17 Bridge, at mile 12.0, across Perquimans River at Hertford, NC. This proposal would allow the drawbridge to operate on an advance notice basis during specific times of the year. The proposed change would result in more efficient use of the bridge during months of infrequent transit.

**DATES:** Comments and related material must reach the Coast Guard on or before April 27, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2009–0073 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Sandra S. Elliott, Bridge



Management Specialist, Fifth Coast Guard District, at (757) 398-6557. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0073), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger

than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG-2009-0073) in the Search box, and click "Go>>." You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The North Carolina Department of Transportation (NCDOT) is responsible for the operation of the US17 Bridge, at mile 12.0, across Perquimans River at Hertford, NC. NCDOT requested advance notification for vessel openings during specific times of the year due to the infrequency of requests for vessel openings of the drawbridge.

The US17 Bridge has a vertical clearance of three feet above mean high water in the closed-to-navigation position. The existing operating regulation is set out in 33 CFR 117.835, which requires the draw to open on signal from 8 a.m. to midnight from April 1 through September 30, and from 10 a.m. to 10 p.m. from October 1 through March 31. The draw need not be opened at all other times.

Bridge opening data, supplied by NCDOT, revealed a significant decrease in yearly openings. In the past three years from 2006 to 2008, the bridge opened for vessels 363, 451 and 266 times, respectively. (See Table A)

**Table A**

**BRIDGE OPENINGS FOR 2006**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
15	4	12	18	59	46	59	37	39	23	35	16

**BRIDGE OPENINGS FOR 2007**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
12	10	14	18	34	79	94	50	45	42	17	36

**BRIDGE OPENINGS FOR 2008**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
9	12	22	26	13	23	76	18	26	20	14	7

Most of the businesses that previously brought materials in via barges through this drawbridge have ceased to operate or they are utilizing different forms of

transportation to move their materials. As such, this dramatic decrease in waterway traffic has resulted in much less frequent openings of the draw itself.

Due to the anticipated infrequency of requests for vessel openings of the drawbridge, NCDOT requested to change the current operating regulation



by requiring the draw of the bridge to open on signal from May 1 to September 30 from 8 a.m. to 10 p.m., and from October 1 to April 30 from 10 a.m. to 8 p.m., if two hours notice is given. The draw need not be opened at all other times.

#### Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.835, by revising the paragraph to read that the draw of the US17 bridge, mile 12.0 at Hertford, NC, shall open on signal from 8 a.m. to 10 p.m. from May 1 through September 30; and from 10 a.m. to 8 p.m. from October 1 through April 30, if two hours notice is given. The draw need not be opened at all other times.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the proposed scheduled bridge openings, to minimize delays.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the proposed scheduled bridge openings can minimize delay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do

discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 32(e), of the Instruction because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.835 to read as follows:

##### § 117.835 Perquimans River

The draw of the US17 Bridge, mile 12.0, at Hertford, NC shall open on signal from 8 a.m. to 10 p.m. from May 1 through September 30; and from 10 a.m. to 8 p.m. from October 1 through April 30, if two hours notice is given. The draw need not be opened at all other times.

Dated: February 17, 2009.

**Fred M. Rosa, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.*

[FR Doc. E9–5408 Filed 3–12–09; 8:45 am]

**BILLING CODE 4910–15–P**

#### PRESIDIO TRUST

##### 36 CFR Part 1012

##### Legal Process: Testimony by Employees and Production of Records

**AGENCY:** Presidio Trust.

**ACTION:** Proposed Rule.

**SUMMARY:** The Presidio Trust proposes a regulation, limited to the Presidio Trust's organization and management, governing access to Presidio Trust information and records in connection with legal proceedings in which neither the United States nor the Presidio Trust is a party. This proposed rule will establish guidelines for use in determining whether Presidio Trust employees (as defined in the proposed rule) will provide testimony or records relating to their official duties. It also will establish procedures for requesters to follow when making demands on or requests to a Presidio Trust employee for official documents or to provide testimony. This proposed rule will standardize the Presidio Trust's practices, promote uniformity in decisions, conserve the ability of the Presidio Trust to conduct official business, preserve its employee resources, protect confidential information, provide guidance to requestors, minimize involvement in matters unrelated to the Presidio Trust's mission and programs, avoid wasteful allocation of agency resources and avoid spending public time and money for private purpose.

**DATES:** Submit written comments on or before April 20, 2009.

**ADDRESSES:** Send written comments to Karen A. Cook, General Counsel, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

##### FOR FURTHER INFORMATION CONTACT:

Karen A. Cook, General Counsel, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415.561.5300.

**SUPPLEMENTARY INFORMATION:** The Presidio Trust, a wholly-owned federal government corporation, on occasion receives subpoenas and other requests for documents and requests for Presidio Trust employees (as defined in the proposed rule) to provide testimony or

evidence in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Sometimes these subpoenas or requests are for Presidio Trust records that are exempt from disclosure under the Freedom of Information Act. The Presidio Trust also receives requests for Presidio Trust employees to appear as witnesses and to provide testimony relating to materials contained in the Presidio Trust's official records or provide testimony or information acquired during the performance of the employees' official duties.

Although many other federal agencies currently have regulations in place to address these types of requests, and the Presidio Trust itself has rules governing requests for information under the Freedom of Information Act, the Presidio Trust has not adopted regulations governing subpoenas and other information requests for document production and testimony of Presidio Trust employees in judicial, legislative or administrative proceedings in which the Presidio Trust is not a party. Issues about such requests that have arisen in recent years warrant adoption of regulations governing their submission, evaluation and processing. Responding to these requests is not only burdensome, but may also result in a significant disruption of a Presidio Trust employee's work schedule, involve the Presidio Trust in issues unrelated to its responsibilities and/or impede the Presidio Trust's accomplishment of its budgetary goals. In order to resolve these issues, many agencies have issued regulations, similar to this proposed regulation, governing the circumstances and manner for responding to demands for testimony or for the production of documents. Establishing uniform procedures for submission, evaluation and response to such demands will ensure timely notice and promote centralized decision making. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Briefly summarized, the proposed rule will prohibit disclosure of official records or testimony by the Presidio Trust's employees unless there is compliance with the rule. The proposed rule sets out the information that requesters must provide and the factors that the Presidio Trust will consider in making determinations in response to requests for testimony or the production of documents.

This proposed rule will ensure a more efficient use of the Presidio Trust's resources, minimize the possibility of involving the Presidio Trust in issues

unrelated to its mission or responsibilities, promote uniformity in responding to such subpoenas and similar requests, and maintain the impartiality of the Presidio Trust in matters that are in dispute between other parties. It will also serve the Presidio Trust's interest in protecting sensitive, confidential and privileged information and records that are generated in fulfillment of the Presidio Trust's responsibilities.

The proposed rule is internal and procedural rather than substantive. It will not create a right to obtain official records or the official testimony of a Presidio Trust employee nor will it create any additional right or privilege not already available to the Presidio Trust to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these proposed regulations would be a basis for denying a demand or request submitted to the Presidio Trust.

This rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 30-day comment period. Interested persons are invited to submit written comments to the Presidio Trust on this proposed regulation, to be received on or before April 20, 2009. Prior to issuing its final rule, the Presidio Trust will review all comments received and consider any modifications to this proposal that appear warranted.

#### **Executive Order 12866—Regulatory Planning and Review**

This proposed rule has been reviewed under Executive Order 12866 issued September 30, 1993 on Regulatory Planning and Review. This proposed rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will neither interfere with an action taken or planned by another agency nor raise new legal or policy issues. This proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Therefore, it has been determined that this is not an economically significant rule.

#### **Executive Order 12988—Civil Justice Reform**

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. This proposed rule has been written so as to minimize

litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities. Additionally, the Presidio Trust has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this proposed rule. Nonetheless, in the event that such a conflict was to be identified, the proposed rule would preempt State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the proposed rule does not require the use of administration proceedings before parties may file suit in court challenging its provisions.

#### **Executive Order 13132—Federalism**

This proposed rule conforms with the Federalism principles set out in Executive Order 13132 and would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it has been determined that this proposed rule does not have federalism implications.

#### **Unfunded Mandates**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) as well as Executive Order 12875, the Presidio Trust has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This proposed rule does not compel the expenditure of \$100 million or more in any one year by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### **Executive Order 13175—Consultation With Indian Tribal Governments**

Pursuant to Executive Order 13175 of November 6, 2000, the Presidio Trust has assessed the impact of this proposed rule on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian Tribal governments. The Presidio Trust has also determined that this proposed rule does not impose substantial direct compliance costs or Tribal implications on Indian tribal governments, and therefore advance consultation with Tribes is not required.

#### **Regulatory Flexibility Act and Executive Order 13272—Consideration of Small Entities**

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) and Executive Order 13272 of August 13, 2002. This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act and Executive Order 13272, because the proposed rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity or ability to remain in the market.

#### **Certification**

The Presidio Trust certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

#### **Congressional Review Act**

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Because this proposed rule is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties it is not a "rule" as defined by the Congressional Review Act (5 U.S.C. 804(3)(C)) and is not subject to it.

#### **Executive Order 13211—Energy Effects**

This proposed rule is not a "significant energy action" as defined in Executive Order 13211 of May 22, 2001, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The Presidio Trust has determined that this proposed rule is not likely to have any adverse energy effects.

#### **The Paperwork Reduction Act of 1995**

This proposed rule contains no paperwork burdens or information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Analysis of Environmental Impact**

The Presidio Trust has analyzed this proposed rule in accordance with the

criteria of the National Environmental Policy Act of 1969 and determined that rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### Government Paperwork Elimination Act

The Presidio Trust is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This proposed rule contains no paperwork burdens or information collection requirements, and is thus in compliance with the GPEA.

### Executive Order 12630—No Takings Implication

This proposed rule has been analyzed in accordance with the principles of and criteria contained in Executive Order 12630 issued March 15, 1988, and it has been determined that the proposed rule does not pose a risk of a taking of constitutionally protected private property.

For the reasons set forth in the preamble, the Presidio Trust proposes to amend chapter X of title 36 of the Code of Federal Regulations by adding new part 1012 to read as follows:

## PART 1012—LEGAL PROCESS: TESTIMONY BY EMPLOYEES AND PRODUCTION OF RECORDS

Sec.

### General Information

1012.1 What does this part cover?

1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

### Responsibilities of Requesters

1012.3 How can I obtain employee testimony or Presidio Trust records?

1012.4 If I serve a subpoena duces tecum, must I also submit a *Touhy* Request?

1012.5 What information must I put in my *Touhy* Request?

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### Responsibilities of the Presidio Trust

1012.8 How will the Presidio Trust process my *Touhy* Request?

1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

### Responsibilities of Employees

1012.10 What must I, as an employee, do upon receiving a request?

1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?

**Authority:** 16 U.S.C. 460bb appendix; 40 U.S.C. 102; 44 U.S.C. 2901 and 3102.

### General Information

#### § 1012.1 What does this part cover?

(a) This part describes how the Presidio Trust responds to requests or subpoenas for:

(1) Testimony by employees in State, territorial or Tribal judicial, legislative or administrative proceedings concerning information acquired while performing official duties or because of an employee's official status;

(2) Testimony by employees in Federal court civil proceedings in which the United States or the Presidio Trust is not a party concerning information acquired while performing official duties or because of an employee's official status;

(3) Testimony by employees in any judicial or administrative proceeding in which the United States or the Presidio Trust, while not a party, has a direct and substantial interest;

(4) Official records or certification of such records for use in Federal, State, territorial or Tribal judicial, legislative or administrative proceedings.

(b) In this part, "employee" means a current or former Presidio Trust employee, or Board member, including a contractor or special government employee, except as the Presidio Trust may otherwise determine in a particular case.

(c) This part does not apply to:

(1) Congressional requests or subpoenas for testimony or records;

(2) Federal court civil proceedings in which the United States or the Presidio Trust is a party;

(3) Federal administrative proceedings;

(4) Federal, State, and Tribal criminal court proceedings;

(5) Employees who voluntarily testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Presidio Trust. The employee must state for the record that the testimony represents the employee's own views and is not necessarily the official position of the Presidio Trust. See 5 CFR 2635.702(b), 2635.807(b).

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by § 1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

#### § 1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?

(a) Except for proceedings covered by § 1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§ 1012.1 through 1012.11. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

### Responsibilities of Requesters

#### § 1012.3 How can I obtain employee testimony or Presidio Trust records?

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "*Touhy* Request;" see § 1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with § 1012.6, if your *Touhy* Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A *Touhy* Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this

chapter, if your *Touhy* Request is granted.

(c) You must send your *Touhy* Request to both:

- (1) The employee; and
- (2) The General Counsel of the Presidio Trust.

(d) The address of Presidio Trust employees and the General Counsel is: Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

**§ 1012.4 If I serve a subpoena duces tecum, must I also submit a *Touhy* request?**

Yes. If you serve a subpoena for employee testimony or if you serve a subpoena *duces tecum* for records in the possession of the Presidio Trust, you also must submit a *Touhy* Request.

**§ 1012.5 What information must I put in my *Touhy* Request?**

Your *Touhy* Request must:

- (a) Identify the employee or record;
- (b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;
- (c) Identify the parties to your proceeding and any known relationships they have with the Presidio Trust or to its mission or programs;
- (d) Show that the desired testimony or records are not reasonably available from any other source;
- (e) Show that no record could be provided and used in lieu of employee testimony;
- (f) Provide the substance of the testimony expected of the employee; and
- (g) Explain why you believe your *Touhy* Request meets the criteria specified in § 1012.9.

**§ 1012.6 How much will I be charged?**

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter. Estimated Costs must be paid in advance by check or money order payable to the Presidio Trust. Upon determination of the precise costs, the Presidio Trust will either reimburse you for any overpayment, or charge you for any underpayment, which charges must be paid within 10 business days by check or money order payable to the Presidio Trust.

**§ 1012.7 Can I get an authenticated copy of a Presidio Trust record?**

Yes. We may provide an authenticated copy of a Presidio Trust record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under parts 1007 or 1008 of this chapter, or this part.

**Responsibilities of the Presidio Trust**

**§ 1012.8 How will the Presidio Trust process my *Touhy* Request?**

(a) The Executive Director will decide whether to grant or deny your *Touhy* Request. The Presidio Trust's General Counsel, or his or her agent, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the General Counsel also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit the Presidio Trust's decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this part, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 1012.9.

**§ 1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?**

In deciding whether to grant your *Touhy* Request, the Executive Director will consider:

- (a) Your ability to obtain the testimony or records from another source;
- (b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and
- (c) The Presidio Trust's ability to:
  - (1) Conduct its official business unimpeded;
  - (2) Maintain impartiality in conducting its business;
  - (3) Minimize the possibility that the Presidio Trust will become involved in issues that are not related to its mission or programs;
  - (4) Avoid spending public employees' time for private purposes;
  - (5) Avoid any negative cumulative effect of granting similar requests;
  - (6) Ensure that privileged or protected matters remain confidential; and
  - (7) Avoid undue burden on the Presidio Trust.

**Responsibilities of Employees**

**§ 1012.10 What must I, as an employee, do upon receiving a request?**

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Presidio Trust's General Counsel for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the General Counsel. After consulting with the General Counsel, the Executive Director will decide whether to grant the *Touhy* Request under § 1012.9.

(c) All decisions granting or denying a *Touhy* Request must be in writing. The Executive Director must ask the General Counsel for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Presidio Trust record may be granted by the person having the legal custody of the record. If you believe that you have custody of a record:

(1) Consult the General Counsel to determine if you can grant a request for authentication of records; and

(2) Consult the General Counsel concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

**§ 1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?**

(a) You must comply with 5 CFR 2635.805(c), which details the authorization procedure for an employee to testify as an expert witness, not on behalf of the United States, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of the Presidio Trust's General Counsel;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Presidio Trust.

(b) If you testify as an expert witness on a matter outside the scope of your official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802.

Dated: March 9, 2009.

Karen A. Cook,

General Counsel.

[FR Doc. E9-5446 Filed 3-12-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 080229343-81352-02]

RIN 0648-XF87

#### Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for Southern Distinct Population Segment of Eulachon

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; 12-month petition finding; request for comments.

**SUMMARY:** We, the NMFS, have completed a review of the status of the Pacific eulachon (*Thaleichthys pacificus*; hereafter “eulachon”) under the Endangered Species Act (ESA) in response to a petition submitted by the Cowlitz Indian Tribe to list eulachon as a threatened or endangered species. After reviewing the best scientific and commercial information available, we have determined that the species is comprised of two or more distinct population segments (DPSs) that qualify as species under the ESA. Moreover, after evaluating threats facing the species, and considering efforts being made to protect eulachon, we have determined that the southern DPS is likely to become endangered within the foreseeable future throughout all of its range. We propose to list it as threatened under the ESA. The southern DPS of eulachon consists of populations spawning in rivers south of the Nass River in British Columbia, Canada, to, and including, the Mad River in California. Within the range of the southern DPS, major production areas or “core populations” for this species include the Columbia and Fraser rivers and may have historically included the Klamath River. We solicit information to inform the development of the final listing rule.

Any protective regulations determined to be necessary and advisable for the conservation of the southern DPS of eulachon under ESA section 4(d) will be proposed in a subsequent **Federal Register** notice. We

solicit information to inform the development of proposed protective regulations and designation of critical habitat in the event the DPS is listed. If the proposed listing is finalized, a recovery plan will also be prepared and implemented for the southern DPS.

**DATES:** Comments on this proposal must be received by May 12, 2009. A public hearing will be held promptly if any person so requests by April 27, 2009. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

**ADDRESSES:** You may submit comments identified by 0648-XF87 by any of the following methods:

- Electronic Submissions: Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Submit written comments to Chief, Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The eulachon petition, status review, and other reference materials regarding this determination can be obtained via the Internet at: <http://www.nwr.noaa.gov/> or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Northwest Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

**FOR FURTHER INFORMATION CONTACT:** Eric Murray, NMFS, Northwest Region (503) 231-2378; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 16, 1999, we received a petition from Mr. Sam Wright of Olympia, Washington, to list and designate critical habitat for Columbia River populations of eulachon. On November 29, 1999, we determined that, while the petition indicated that

eulachon catches had recently declined in the Columbia River basin, it did not present substantial scientific information indicating that the petitioned action may be warranted (64 FR 66601). That finding was based on observations that the species is likely more abundant than commercial landings indicate and, based on life history attributes (e.g., the species’ high fecundity and short life span) and assumptions from catch data and anecdotal reports, has a demonstrated ability to rebound from periods of low abundance. Additionally, the petition did not provide sufficient information regarding the distinctness of eulachon populations in the Columbia River relative to the other populations in the species’ range.

On November 8, 2007, we received a petition from the Cowlitz Indian Tribe requesting that we list the eulachon that spawn south of the U.S./Washington-Canada border as threatened or endangered under the ESA. In contrast to our 1999 review, we concluded there was sufficient information showing that eulachon may warrant delineation into DPSs and that eulachon in the petitioned portion of the species’ range had substantially declined in abundance. On March 12, 2008, we determined that the petition presented substantial information indicating that the petitioned action may be warranted, and we requested information to assist with a status review to determine if eulachon warranted listing under the ESA (73 FR 13185).

#### ESA Statutory Provisions

The ESA defines species to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16)). The U.S. Fish and Wildlife Service (FWS) and NMFS have adopted a joint policy describing what constitutes a DPS of a taxonomic species (61 FR 4722; February 7, 1996). The joint DPS policy identifies two criteria for making DPS determinations: (1) the population must be discrete in relation to the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be significant to the remainder of the taxon to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) “it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation”; or (2) “it is delimited by international

governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)" of the ESA.

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) "persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics."

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532 (6) and (20)). The statute requires us to determine whether any species is endangered or threatened because of any of the following factors: the present or threatened destruction of its habitat, overexploitation, disease or predation, the inadequacy of existing regulatory mechanisms, or any other natural or manmade factors (16 U.S.C. 1533). We are to make this determination based solely on the best available scientific and commercial information after conducting a review of the status of the

species and taking into account any efforts being made by states or foreign governments to protect the species.

#### Status Review

To conduct the status review, we formed a Biological Review Team (BRT) comprised of Federal scientists from our Northwest, Southwest, and Alaska Fisheries Science Centers, the FWS, and the U.S. Forest Service. We asked the BRT to review the best available scientific and commercial information to determine whether eulachon warrant delineation into DPSs, using the criteria in the joint DPS policy. We then asked the BRT to assess the level of extinction risk facing the species, describing their confidence that the species is at high risk, moderate risk, or neither. We described a species with high risk as one that is at or near a level of abundance, productivity, and/or spatial structure that places its persistence in question. We described a species at moderate risk as one that exhibits a trajectory indicating that it is more likely than not to be at a high level of extinction risk in the foreseeable future, with the appropriate time horizon depending on the nature of the threats facing the species and the species' life history characteristics. In evaluating the extinction risk, we asked the BRT to describe the threats facing the species, according to the statutory factors listed under section 4(a)(1) of the ESA. The draft report of the BRT deliberations (Gustafson *et al.*, 2008) (hereafter "status report") thoroughly describes eulachon biology and natural history, and assesses demographic risks, threats, limiting factors, and overall extinction risk. The key background information and findings of the draft status report are summarized below.

#### Biology and Life History of Eulachon

The biology of eulachon is described in detail in the draft status report and in Willson *et al.* (2006), and is summarized below. Eulachon are a member of the osmerid family (smelts), and no subspecies have been identified. The following section presents biology and life history information gathered from throughout the range of eulachon, though much of the research on eulachon has occurred in Alaska and British Columbia. A later section focuses on information specific to the southern DPS of eulachon.

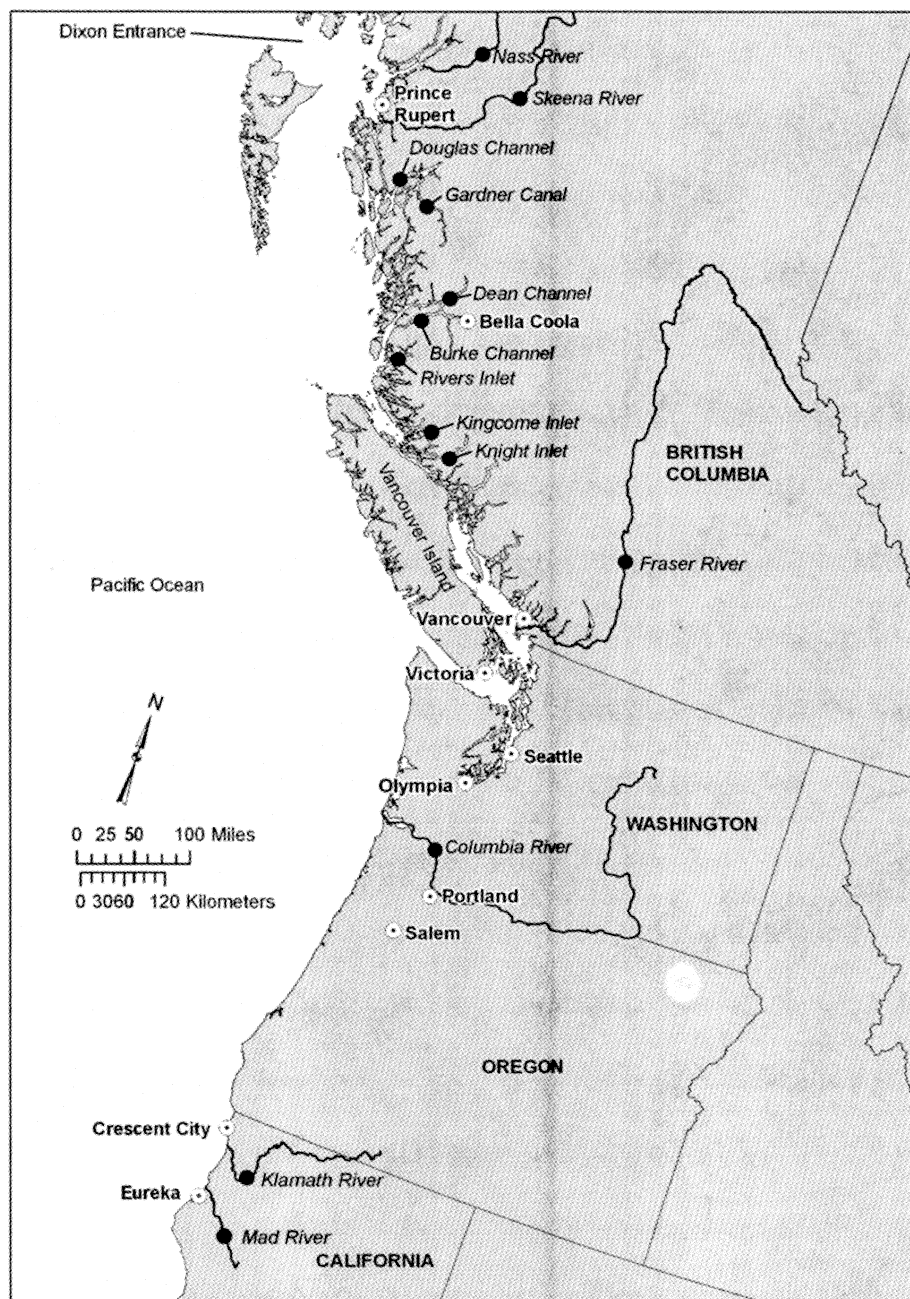
#### Spawning Range

Eulachon (also called Columbia River smelt, candlefish, or hooligan) are endemic to the northeastern Pacific Ocean, ranging from northern California to southwest and south-central Alaska and into the southeastern Bering Sea. In the portion of the species' range that lies south of the U.S./Washington-Canada border, most eulachon production originates in the Columbia River Basin (Figure 1). Within the Columbia River Basin, the major and most consistent spawning runs return to the mainstem of the Columbia River (from just upstream of the estuary, river mile (RM) 25, to immediately downstream of Bonneville Dam, RM 146) and in the Cowlitz River. Periodic spawning also occurs in the Grays, Skamokawa, Elochoman, Kalama, Lewis, and Sandy rivers (tributaries to the Columbia River) (Oregon Department of Fish and Wildlife (ODFW) and Washington Department of Fish and Wildlife (WDFW), 2001). Other river basins in the lower 48 United States where spawning runs of eulachon have been documented include the Klamath River in northern California and infrequently in some, but not all, coastal rivers

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**Figure 1. Rivers, channels and inlets referred to in the eulachon status review.**



**BILLING CODE 3510-22-C**

in northern California, Oregon and Washington (Emmett *et al.*, 1991, Willson *et al.*, 2006). Major production areas in Canada are the Fraser and Nass rivers (Willson *et al.*, 2006). Numerous other river systems in central British Columbia and Alaska have consistent yearly runs of eulachon and historically supported significant levels of harvest (Willson *et al.*, 2006; Gustafson *et al.*, 2008). Many sources note that runs occasionally occur in many other rivers and streams, although these tend to be

erratic, appearing in some years but not others, and appearing only rarely in some river systems (Hay and McCarter, 2000; Willson *et al.*, 2006).

*Spawning Behavior*

Eulachon typically spend 3–5 years in saltwater before returning to fresh water to spawn from late winter through early summer. Spawning grounds are typically in the lower reaches of larger rivers fed by snowmelt (Hay and McCarter, 2000). Spawning typically occurs at night. Willson *et al.* (2006)

concluded that the age distribution of eulachon in a spawning run probably varies among rivers and also varies between sexes in some years, and among years in the same river system. Males typically outnumber females by 2:1 or more. Spawning occurs at temperatures from 4° to 10° C in the Columbia River and tributaries (ODFW and WDFW, 2001) and from 0° to 2° C in the Nass River (Langer *et al.*, 1977) over sand, coarse gravel, or detrital substrates. The sexes must synchronize their activities closely, unlike some



other group spawners such as herring, because eulachon sperm remain viable for only a short time, perhaps only minutes (Hay and McCarter, 2000). Some researchers report that males lie next to, beside, or on top of females in riffles (Lewis *et al.*, 2002). Langer *et al.* (1977) report that males congregate upstream of groups of females, releasing milt simultaneously, and females lay eggs as the milt drifts over them. Eggs are fertilized in the water column, sink, and adhere to the river bottom typically in areas of gravel and coarse sand. Most eulachon adults die after spawning.

In many rivers, spawning is limited to the part of the river that is influenced by tides (Lewis *et al.*, 2002), but some exceptions exist. In the Berners Bay system of Alaska, the greatest abundance of eulachon was observed in tidally-influenced reaches, but some fish ascended well beyond the tidal influence (Willson *et al.*, 2006). Eulachon once ascended more than 160 km in the Columbia River system. There is some evidence that water velocity greater than 0.4 m/s begins to limit the upstream movements of eulachon (Lewis *et al.*, 2002).

Entry into the spawning rivers appears to be related to water temperature and the occurrence of high tides (Ricker *et al.*, 1954; Smith and Saalfeld, 1955; Spangler, 2002). Spawning occurs in January, February, and March in the Columbia River, and April and May in the Fraser River. Eulachon runs in central and northern British Columbia typically occur in late February and March or late March and early April. Attempts to characterize eulachon run timing are complicated further by marked annual variation in timing. Willson *et al.* (2006) give several examples of spawning run timing varying by a month or more in rivers in British Columbia and Alaska.

Although spawning generally occurs at temperatures from 4° to 7° C in the Cowlitz River (Smith and Saalfeld, 1955), peak eulachon runs occurred at noticeably colder temperatures (between 0° and 2° C) in the Nass River. The Nass River run is also earlier than the eulachon run that occurs at warmer temperatures in the Fraser River (Langer *et al.*, 1977).

#### *Early Life History and Maturation*

Eulachon eggs are approximately 1 mm in diameter, averaging about 43 mg in weight; however, in the Fraser River population egg weight varied from 10 mg in fish measuring 120 mm in length to almost 30 mg in fish of 180–190 mm standard length (Hay and McCarter, 2000). Eggs are enclosed in a double membrane; after fertilization in the

water, the outer membrane breaks and turns inside out, creating a sticky stalk which helps anchor the eggs to sand grains and small gravel (Hart and McHugh, 1944; Hay and McCarter, 2000). Eulachon eggs hatch in 20–40 days, with incubation time dependent on water temperature. Shortly after hatching, the larvae are carried downstream and dispersed by estuarine and ocean currents. Similar to salmon, juvenile eulachon are thought to imprint on the chemical signature of their natal (birth) river basins. However, juvenile eulachon spend less time in freshwater environments than do juvenile salmon, and researchers believe that this short freshwater residence time may cause returning eulachon to stray more from their birth spawning sites than salmon (Hay and McCarter, 2000).

After leaving estuarine rearing areas, juvenile eulachon move from shallow nearshore areas to deeper areas over the continental shelf. Larvae and young juveniles become widely distributed in coastal waters, with fish found mostly at depths up to 15 m (Hay and McCarter, 2000) but sometimes as deep as 182 m (Barracough, 1964). There is currently little information available about eulachon movements in nearshore marine areas and the open ocean. Willson *et al.* (2006) summarized the results of surveys showing concentrations of pre-spawning adult eulachon off Vancouver Island, in the Bering Sea, in the Gulf of Alaska, in Prince William Sound, and in the Coastal Fjords of Southeast Alaska. The amount of eulachon bycatch in the pink shrimp fishery seems to indicate that the distribution of these organisms overlap in the ocean.

#### *Prey*

Eulachon feed on zooplankton, chiefly eating crustaceans such as copepods and euphausiids, including *Thysanoessa* spp. (Barracough, 1964; Hay and McCarter, 2000), unidentified malacostracans (Sturdevant *et al.*, 1999), and cumaceans (Smith and Saalfeld, 1955). Eulachon larvae and post-larvae eat phytoplankton, copepods, copepod eggs, mysids, barnacle larvae, worm larvae, and eulachon larvae (WDFW and ODFW, 2001). Adults and juveniles commonly forage at moderate depths (15 to 182 m) in inshore waters (Hay and McCarter, 2000).

#### *Predators*

Eulachon are very high in lipids, and, due to their availability during spawning runs, they are an important part of the Pacific coastal food web. They have numerous avian predators such as harlequin ducks, pigeon

guillemots, common murrelets, mergansers, cormorants, gulls, and eagles. Marine mammals such as baleen whales, orcas, dolphins, pinnipeds, and beluga whales are known to feed on eulachon. During spawning runs, bears and wolves have been observed consuming eulachon. Fishes that prey on eulachon include white sturgeon, spiny dogfish, sablefish, salmon sharks, arrowtooth flounder, salmon, Dolly Varden, Pacific halibut, and Pacific cod. In particular, eulachon and their eggs seem to provide a significant food source for white sturgeon in the Columbia and Fraser Rivers.

#### *Age and Length*

It is difficult to compare eulachon body lengths among reports because researchers have used different length measures (i.e., standard, fork, and total length) and these must be standardized for across-population comparisons (Buchheister and Wilson, 2005). As expected, both length and body mass increase with age. Eulachon on the Twentymile River averaged about 180–200 mm and 40–58 g at age 2, to 220–225 mm and 80–90 g at age 5. At age 3, the most common age of spawners, fork length averaged about 200–215 mm and body mass averaged about 60–65 g (estimated from Spangler, 2002). For the Fraser River population, fork-length distribution was as follows: age 0+ fish were about 20–50 mm, age 1+ about 50–80 mm, age 2+ about 75–105 mm, age 3+ about 105–135 mm, and age 4+ about 135–160 mm (estimated by Willson *et al.*, 2006, from Barracough, 1964). Eulachon in the Kemano, Kitimat, Nass, Stikine, and Columbia rivers have similar distributions of size-at-age, but the increase in size-at-age is small for both sexes (10 mm from age 3 to 4 and 4 mm from age 4 to 5; Lewis *et al.*, 2002).

#### *DPS Delineation*

Evidence that the BRT found informative for determining whether southern populations of eulachon may be discrete from northern populations of eulachon included differences in: spawning characteristics; size- and age-at-maturity of eulachon between northern and southern rivers in the species' range; ecological features of both the oceanic and freshwater environments occupied by eulachon; and genetic characteristics.

#### *Spawning Characteristics*

Eulachon generally spawn in rivers that are glacier- or snowmelt-fed and have a pronounced peak freshet in spring. Some researchers hypothesize that the rapid flushing of eggs and

larvae out of the spawning river reach by these freshets may result in eulachon imprinting and homing to the larger local estuary rather than to individual spawning rivers (Hay and McCarter, 2000). Thus, the estuary has been invoked as the likely geographic population unit for eulachon (Hay and McCarter, 2000; Hay and Beacham, 2005).

Variation in spawn timing among rivers has also been cited as indicative of local adaptation in eulachon (Hay and McCarter, 2000), although the wide overlap in spawn timing among rivers makes it difficult to discern distinctive patterns in this trait. These differences in spawn timing result in some populations spawning when water temperatures are as low as 0–2° C, and sometimes under ice (e.g., in the Nass River; Langer *et al.*, 1977), whereas other populations experience spawning temperatures of from 4–7° C (e.g., in the Cowlitz River; (Smith and Saalfeld, 1955)). In general, eulachon spawn earlier in southern portions of their range than in rivers to the north. River-entry and spawning begin as early as December and January in the Columbia River Basin and as late as June in central Alaska. However, eulachon have been known to spawn as early as January in rivers of the Copper River Delta of Alaska and as late as May in northern California. The general spawn timing pattern is reversed along the coast of British Columbia where the earliest spawning occurs in the Nass River in the far north in February to early March, and the latest spawning occurs in the Fraser River in April and May in the far south.

#### Size and Age-at-Maturity

Coastwide, there appears to be an increase in both mean length and weight of eulachon at maturity with an increase in latitude. Mean eulachon fork length and weight at maturity range from about 215 mm and 70 g in the Twentymile River in Alaska to 175 mm and 37 g in the Columbia River. This pattern is typical of many vertebrate poikilotherms (i.e., cold-blooded animals), for which higher rearing temperatures result in reduced size at a given stage of development (Lindsey, 1966; Atkinson, 1994; Stout *et al.*, 2001a).

Age determination of eulachon has been difficult to validate and estimates of age based on otolith increments may not be accurate (Ricker *et al.* 1954, Hay and McCarter 2000). Most studies based on otolith increments conclude that some eulachon spawn at age–2 through age–5, but most spawn at age–2, age–3 or age–4 (Barraclough, 1964; Langer *et*

*al.*, 1977; Hay and McCarter, 2000; Willson *et al.*, 2006). Recently, Clarke *et al.* (2007) developed a method to estimate eulachon age at spawning from analysis of variations in barium and calcium in the otoliths. This study indicated that age structure of spawners in the southern areas may be limited to one or at most two year classes (Clarke *et al.*, 2007). According to Clarke *et al.* (2007), the number of peaks in the Barium to Calcium ratio observed in eulachon otoliths increased with increasing latitude, suggesting that the age at maturity is older for northern populations.

#### Ecological Boundaries

The fidelity with which eulachon return to their natal river, estuary, or inlet implies some association between a specific population and its freshwater and/or estuarine environment. Differences in life-history strategies among eulachon populations may have arisen, in part, in response to selective pressures of different freshwater/estuarine environments. If the boundaries of distinct freshwater or estuarine habitats coincide with differences in life histories, it would suggest a certain degree of local adaptation. The BRT looked at the characteristics of the terrestrial and marine environments occupied by eulachon to assist in evaluating potential DPS structure.

The BRT used the Environmental Protection Agency ecoregion designations (Omernik, 1987) to evaluate potential eulachon DPS structure based on freshwater distribution. These ecoregions have been used in past ESA status reviews and recovery plans to identify DPSs and population structure of Pacific salmon and other marine fishes (e.g., Good *et al.*, 2005). The historical distribution of eulachon in Washington, Oregon, and California corresponds closely with the Coastal Range Ecoregion as defined in Omernik (1987). Extending from the Olympic Peninsula through the Coast Range proper and down to the Klamath Mountains and the San Francisco Bay area, this region is influenced by medium to high rainfall levels because of the interaction between marine weather systems and the mountainous nature of the region. Topographically, the region averages about 500 m in elevation, with mountain tops under 1,200 m in elevation. The region is heavily forested, primarily with Sitka spruce, western hemlock, and western red cedar. Streams occupied by eulachon within this region generally follow two distinct annual flow patterns: (1) Streams draining coastal

watersheds, where winter rain storms are common, have high flow periods coinciding with these storms; (2) streams draining more interior areas, such as the Columbia and Cowlitz Rivers, have a distinct spring freshet period coinciding with snow melt. Eulachon production is highest in these latter systems.

The BRT also used Environment Canada's (2008) established system of ecozones and ecoregions to help assess eulachon DPS boundaries in Canada. Their "Ecozones" are approximately the same size as the ecoregions defined by Omernik (1987), while their ecoregions are considerably smaller. All rivers that support regular runs of eulachon in British Columbia are within the Pacific Maritime Ecozone, which consists of 14 ecoregions. The Lower Mainland, Pacific Ranges, and Coastal Gap ecoregions contain rivers supporting regular runs of eulachon as defined in Hay and McCarter (2000) and Hay (2002). The Lower Mainland Ecoregion is dominated by the Fraser River and includes the Fraser River valley. Mean annual precipitation in the Fraser River Valley ranges from 200 cm in the Cascade foothills to 85 cm at the river's mouth. Mean summer and winter air temperatures in this region are 15° C and 3.5° C, respectively. Douglas fir dominates native forest stands while other common tree species include red alder, Pacific madrone, western red cedar and western hemlock. The Pacific Ranges Ecoregion extends from the southern extent of the steeply sloping irregular Coast Mountains at the US border to Bella Coola in the north. These mountains range from sea level to as high as 4000 m. Many rivers in this region originate in expansive ice-fields, and numerous glaciers extend into the lowlands. Mean summer and winter air temperatures in this region are 13.5° C and -1° C, respectively. Mean annual precipitation in this ecoregion ranges from 340 cm at high elevations to 150 cm at sea level. The coastal forest zone is dominated by stands of western red cedar, western hemlock, and Pacific silver fir; and by Douglas fir and western hemlock in drier sites. The Coastal Gap Ecoregion extends from Dean Channel north to the border between British Columbia and Alaska and is bounded by the taller Pacific Ranges to the south and the Boundary Ranges to the north. The low-relief mountains in this ecoregion consist of the Kitimat Ranges, which rarely reach higher than 2400 m. Mean summer and winter air temperatures in this region are 13° C and -0.5° C, respectively. This ecoregion has the highest mean annual

precipitation in British Columbia, ranging from 200 cm on the coast to over 450 cm at high elevations. Forests are dominated by western red cedar, yellow cedar, and western hemlock. Some Sitka spruce and shore pine are also present with red alder being common on disturbed sites.

The Nass Basin Ecoregion contains two rivers, the Nass and the Skeena, which also support regular runs of eulachon. The Nass Basin Ecoregion lies between the interior and coastal portions of the Coast Mountains in west-central British Columbia and is an area of low-relief composed of folded Jurassic and Cretaceous sediments that is almost encircled by mountains. Mean summer and winter air temperatures in this region are 11.5° C and -9.5° C, respectively. Mean annual precipitation ranges up to 250 cm at higher elevations to 150 cm in the lowlands. The moist montane zone is dominated by western red cedar and western hemlock, whereas forests in the subalpine zone contain subalpine fir, lodgepole pine, and Engelmann spruce.

The BRT also looked at ecological features of the ocean environment to evaluate potential eulachon DPS structure. Ware and McFarlane (1989) built upon previous descriptions of oceanic domains in the northeast Pacific Ocean by Dodimead *et al.* (1963) and Thomson (1981) to identify three principal fish production domains in the range of eulachon: (1) a Southern Coastal Upwelling Domain, (2) a Northern Coastal Downwelling Domain, and (3) a Central Subarctic Domain (the Alaskan Gyre). The boundary between the Coastal Upwelling Domain and Coastal Downwelling Domain occurs where the eastward flowing Subarctic Current (also called the North Pacific Current) bifurcates to form the north-flowing Alaska Current and the south-flowing California Current. This occurs in the vicinity of a Transitional Zone between the northern tip of Vancouver Island and the northern extent of the Queen Charlotte Islands (an archipelago off the northwest coast of British Columbia, Canada, just south of the Nass River outlet).

Similarly, Longhurst (2006) identifies an Alaska Downwelling Coastal Province and a California Current Province within the Pacific Coastal Biome in his delineation of ocean zones. Within Longhurst's (2006) Pacific Coastal Biome, ocean distribution of eulachon spans the Alaska Downwelling Coastal Province and the northern portion of the California Current Province. Longhurst (2006) also places the boundary between the Alaska Coastal Downwelling Province and the

California Current Province where the eastward flowing Subarctic Current (also called the North Pacific Current) bifurcates.

Different modes of physical forcing and nutrient enrichment characterize these provinces. Eulachon occupying these different provinces likely experience different ocean conditions and selective pressures. In the Alaska Coastal Downwelling province, large amounts of precipitation and runoff from melting glaciers along the mountainous Alaskan coast provide the majority of freshwater input. In summer and fall, when runoff is at a maximum, waters in the fjord-like coastline and in this area are usually highly stratified in both temperature and salinity. Following the spring phytoplankton bloom, stratification in the top layers of the water column limits nutrient availability and leads to subsequent nutrient depletion. Occasional wind events lead to temporary local upwelling of nutrients and subsequent phytoplankton blooms. In general, water temperatures are lower in this province than the more southerly California Current Province.

In the California Current Province, seasonal wind driven upwelling is a dominate feature of this province. This process carries nutrients onshore where they are upwelled along the coast, leading to high primary production that lasts through much of the spring and summer. Nearshore upwelling also results in higher salinities and lower temperatures compared to offshore locations.

These two provinces are also characterized by distinct plankton communities: a boreal community in the Alaska Downwelling Province and a temperate community in the California Current Province. Food availability for eulachon differs in type and seasonal availability between provinces. It is likely that food availability highly influences eulachon behaviors such as seasonal movements.

#### Genetics

The analysis of the geographical distribution of genetic variation is a powerful method for identifying discrete populations. In addition, such analysis can sometimes be used to estimate historical dispersals, equilibrium levels of migration (gene flow), and past isolation. Commonly used molecular genetic markers include protein variants (allozymes), microsatellite loci (variable numbers of short tandem repeats in nuclear DNA), and mitochondrial DNA (mtDNA).

The BRT reviewed three published genetic studies to consider evidence of

population structure in eulachon. One of these studies (McLean *et al.*, 1999) used restriction fragment length polymorphism analysis to examine variation in mtDNA. Mitochondrial DNA studies are generally most useful for detecting deep divergence patterns of population structure, and may not be very powerful for detecting structure among closely related populations. The other studies (McLean and Taylor, 2001; Kaukinen *et al.*, 2004; Beacham *et al.*, 2005) analyzed microsatellite loci. Microsatellite DNA markers can potentially detect population structure on finer spatial and temporal scales than can other DNA or protein markers because of higher levels of polymorphism (diversity) found in microsatellite DNA (reflecting a high mutation rate).

McLean *et al.* (1999) examined mtDNA variation in 285 eulachon samples collected at 11 freshwater sites ranging from the Columbia River to Cook Inlet, Alaska, and also from 29 ocean-caught fish captured in the Bering Sea. They concluded that, overall, there was little genetic differentiation among eulachon collected from distinct freshwater locations throughout the eulachon range. The pattern of eulachon mtDNA variation does not indicate the existence of any highly divergent populations and is consistent with the hypothesis that eulachon dispersed from a single glacial formation and retreat event. However, McLean *et al.* (1999) did note an association of geographic distance with genetic differentiation among eulachon populations, and suggested this represented an emerging population subdivision throughout the range of the species.

In a later study, McLean and Taylor (2001) used five microsatellite loci to examine variation in the same set of populations as McLean *et al.* (1999). The populations in the Columbia and Cowlitz rivers were represented by 2 years of samples with a total sample size of 60 fish from each river. However, several populations were represented by very few samples, including just five fish from the three rivers in Gardner Canal and just 10 fish from the Fraser River. Results from a hierarchical analysis of molecular variance test were similar to those of the McLean *et al.* (1999) mtDNA study, with 0.85 percent of variation occurring among large regions and 3.75 percent among populations within regions. In contrast to the mtDNA analysis however, genetic distances among populations using these five microsatellite loci were not correlated with geographic distances. Overall, McLean and Taylor (2001)

concluded that their microsatellite DNA results were mostly consistent with the mtDNA findings of McLean *et al.* (1999) and that both studies indicated that eulachon have some degree of population structure.

The most extensive genetic study of eulachon, in terms of sample size and number of loci examined, is that of Beacham *et al.* (2005). Beacham *et al.* (2005) examined microsatellite DNA variation in eulachon collected at 9 sites ranging from the Columbia River to Cook Inlet, Alaska, using the 14 loci developed in an earlier study by Kaukinen *et al.* (2004). Sample sizes per site ranged from 74 fish from the Columbia River to 421 from the Fraser River. Samples collected in multiple years were analyzed from populations in the Bella Coola and Kemano rivers (2 years of sampling) and also in the Nass River (3 years of sampling). Beacham *et al.* (2005) observed much greater microsatellite DNA diversity within populations than that reported by McLean and Taylor (2001), and all loci were highly polymorphic in all of the sampled populations. Significant genetic differentiation was observed among all comparisons of the nine populations in the study. A cluster analysis of genetic distances showed genetic affinities among the populations in the Fraser, Columbia, and Cowlitz rivers and also among the Kemano, Klinaklini, and Bella Coola rivers along the central British Columbia coast. In particular, there was evidence of a genetic discontinuity north of the Fraser River, with Fraser and Columbia/Cowlitz samples being approximately 3–6 times more divergent from samples further to the north than they were to each other. Similar to the mtDNA study of McLean *et al.* (1999), the authors also found that genetic differentiation among populations was correlated with geographic distances.

Beacham *et al.* (2005) found stronger evidence of population structure than the earlier genetic studies, and concluded that their results indicated that management of eulachon would be appropriately based at the level of the river drainage. In particular, the microsatellite DNA analysis showed that populations of eulachon in different rivers are genetically differentiated from each other at statistically significant levels. The authors suggested that the pattern of eulachon differentiation was similar to that typically found in marine fish, which is less than that observed in most salmon species.

Although Beacham *et al.* (2005) found clear evidence of genetic structure among eulachon populations, the authors also noted that important

questions remained unresolved. The most important one in terms of identifying DPSs for eulachon is the relationship between temporal and geographic patterns of genetic variation. In particular, Beacham *et al.* (2005) found that year-to-year genetic variation within three British Columbia coastal river systems was similar to the level of variation among the rivers, which suggests that patterns among rivers may not be temporally stable. However, in the comparisons involving the Columbia River samples, the variation between the Columbia samples and one north-of-Fraser sample from the same year was approximately 5 times greater than a comparison within the Columbia from 2 different years.

When all genetic studies are considered, the BRT found modest genetic structure within eulachon, with the most obvious genetic break appearing to occur in southern British Columbia north of the Fraser River. This break indicates a degree of reproductive isolation between northern and southern populations, suggesting the two population segments are discrete.

#### *DPS Conclusions of the BRT*

Based on the foregoing, the BRT identified six possible DPS configurations or scenarios that could include eulachon that spawn in Washington, Oregon, and California rivers (i.e., the petitioned region). The geographic boundaries of possible DPSs considered in this evaluation were: (1) the entire biological species is the “ESA species” (i.e., there is no DPS structure within the species); (2) a DPS boundary near the Yakutat Forelands in Alaska such that eulachon in Southeast Alaska through Northern California consist of one DPS and eulachon further north and west consist of one or more additional DPS(s); (3) a DPS boundary just south of the Nass River/Dixon Entrance in British Columbia such that eulachon from south of the Nass River through Northern California consist of one DPS and eulachon from the Nass River and further north and west consist of one or more additional DPS(s); (4) a DPS boundary north of the Fraser River such that eulachon from the Fraser River through Northern California consist of one DPS and eulachon from the Fraser River and further north and west consist of one or more additional DPS(s); (5) a DPS boundary south of the Fraser River such that eulachon south of the U.S.-Canada border consist of one DPS and eulachon from the Fraser River and further north and west consist of one or more additional DPS(s); (6) multiple DPSs of eulachon in Washington, Oregon and California and one or more

additional DPSs throughout the remainder of the species’ range.

Because of the paucity of quantitative population data, the BRT used structured decision making to guide its determination of DPS structure and boundaries. To allow for expressions of the level of uncertainty in identifying the boundaries of a discrete eulachon population, the BRT adopted a “likelihood point” method, often referred to as the “FEMAT” method because it is a variation of a method used by scientific teams evaluating management options under the Northwest Forest Plan (Forest Ecosystem Management and Assessment Team, 1993). In this approach, each BRT member distributed 10 “likelihood points” amongst these six DPS scenarios. This approach has been widely used by NMFS BRTs in previous DPS determinations (e.g., Pacific Salmon, Southern Resident Killer Whale). The BRT did not attempt to divide the entire species into DPSs, but rather focused on evaluating whether a DPS could be identified that contains eulachon that spawn in Washington, Oregon, and California, as discussed in the listing petition.

Scenario 1 (no DPS structure) received about 12 percent of the total likelihood points. Scenarios 2 (one DPS inclusive of eulachon in Southeast Alaska to Northern California) and 5 (one DPS south of the Fraser River) received no support by the BRT. There was also very little BRT support for multiple DPSs of eulachon in the conterminous United States; only 4 percent of the likelihood points were placed in scenario 6. All remaining likelihood points (84 percent) were distributed among scenarios supporting a DPS at a level larger than the petitioned unit of Washington, Oregon, and California but smaller than the entire biological species. Scenario 3 (one DPS south of the Nass River/Dixon Entrance) received over 57 percent of the total likelihood points. Scenario 4 (one DPS inclusive of eulachon in the Fraser River through California) received significant support with over 27 percent of all points placed in this scenario.

After reviewing these results, it was the majority opinion of the BRT that eulachon from Washington, Oregon, and California are not discrete from eulachon north of the U.S.-Canada boundary (as petitioned), but that eulachon south of the Nass River are discrete from eulachon in the Nass River and northward (Figure 1). This opinion is based on the evidence indicating that eulachon occurring in this area are discrete from eulachon occurring north

of this area based on differences in spawning temperatures; length- and weight-at-maturity; ecological features of both the oceanic and freshwater environments occupied by eulachon; and the genetic results (particularly of Beacham *et al.* 2005).

This BRT determined the discrete population segment is significant to the species as a whole because it constitutes over half of the geographic range of the entire species' distribution and includes at least two of the major production areas (Columbia and Fraser rivers) for the entire species. Therefore, the loss of this DPS would result in a significant reduction in the species' overall distribution.

During the status review, the BRT did not evaluate potential DPS structure of eulachon populations occurring north of the Nass River. The BRT found, however, that northern populations are discrete from southern populations. We conclude that this discrete northern population segment (from the Nass River (inclusive) to Bristol Bay, Alaska) would also be significant to the taxon because it comprises a substantial portion of the range of the species and because the Alaska Downwelling Coastal Province (described above) represents a unique ecological setting for the taxon. We have not considered whether this northern population segment of eulachon might be further subdivided into more than one DPS. We refer to the DPS south of the Nass River as the southern DPS.

## Extinction Risk Assessment

### Information Reviewed

The BRT considered several types of information while evaluating the status of the southern DPS of eulachon. The available data types and their respective strengths and weaknesses are discussed in detail in the draft status report. Fishery-independent scientific assessments of the total number or biomass of spawning eulachon were only available for the Fraser River and from several other British Columbia rivers. In some areas, the only data available on eulachon abundance are derived from commercial or subsistence fisheries landings. Commercial landings were available from the Klamath, Columbia, Umpqua, Fraser, Kitimat, and Skeena rivers. Data from Canadian First Nations subsistence fisheries landings were available for the Fraser River and several other British Columbia coastal rivers. Recreational fisheries for eulachon have been poorly documented, even though the recreational catch may have been equal to the commercial catch on many rivers with eulachon runs.

Some data are available for Fraser River recreational catches and the BRT considered this information. The BRT recognized that inferring population status from commercial, subsistence, or recreational fishery data can be problematic and considered this when drawing conclusions from fishery-dependent data.

Numerous ethnographic studies emphasize the nutritional and cultural importance of eulachon to coastal Indian tribes and First Nations. The BRT examined ethnographic sources that describe historical distributions and relative abundance of eulachon fisheries within the boundaries of the DPS. Many of the statements in these sources as to the historical distribution and abundance of eulachon consisted of traditional ecological knowledge or were anecdotal in nature. The BRT also examined a variety of both primary anecdotal sources (e.g., accounts of early explorers, surveyors, fur trappers, and settlers; and newspaper articles) and secondary anecdotal sources (e.g., agency fisheries reports and journal articles that cite personal communications) that describe historical distributions and relative abundance of eulachon within the boundaries of the DPS.

### Absolute Numbers

The absolute number of individuals in a population is important in assessing two aspects of extinction risk. For small populations that are stable or increasing, population size can be an indicator of whether the population can sustain itself into the future in the face of environmental fluctuations and small-population stochasticity. In addition to total numbers, the spatial and temporal distribution of adults is important in assessing risk to a species or DPS. At a minimum, adults need to be in the same place at the same time for reproduction to occur.

Several aspects of eulachon biology indicate that large aggregations of adult eulachon are necessary for maintenance of normal reproductive output. Eulachon are a short-lived, high-fecundity, high-mortality forage fish, and such species typically have large population sizes. Research from other marine fishes (Sadovy, 2001) suggests that there is likely a biological requirement for a critical threshold density of eulachon during spawning to ensure adequate synchronization of spawning, mate choice, gonadal sterol levels, and fertilization success. Since eulachon sperm may remain viable for only a short time, perhaps only minutes, sexes must synchronize spawning activities closely, unlike other fish such

as Pacific herring (Hay and McCarter, 2000; Willson *et al.*, 2006). In most samples of spawning eulachon, males greatly outnumber females (although many factors may contribute to these observations) (Willson *et al.* 2006), and in some instances congregations of males have been observed simultaneously spawning upstream of females that laid eggs as milt drifted downstream (Langer *et al.*, 1977).

In addition, the genetically effective population size of eulachon may be much lower than the census size. Effective size is important because it determines the rate of inbreeding and the rate at which a population loses genetic variation. In marine species, under conditions of high fecundity and high mortality associated with pelagic larval development, local environmental conditions may lead to random "sweepstakes recruitment" events where only a small minority of spawning individuals contribute to subsequent generations (Hedgcock, 1994), and this effect appears to be more pronounced in larger populations (Hauser and Carvalho, 2008).

### Historical Abundance and Carrying Capacity

Knowing the relationship of present abundance to present carrying capacity is important for evaluating the health of populations; but the fact that a population is near its current carrying capacity does not necessarily signify full health. A population near carrying capacity implies that short-term management may not be able to increase fish abundance.

The relationship of current abundance and habitat capacity to historical levels is another important consideration in evaluating risk. Knowledge of historical population conditions provides a perspective for understanding the conditions under which present populations evolved. Historical abundance also provides the basis for scaling long-term trends in populations. Comparison of present and past habitat capacity can also indicate long-term population trends and problems of population fragmentation. For eulachon, current and historical abundance data and information was available in the form of spawner biomass and/or total spawner counts, offshore juvenile eulachon biomass estimates, mean eulachon larval density, catch-per-unit-effort, commercial/recreational/subsistence fisheries landings, ethnographic studies, and anecdotal qualitative information.

### Trends in Abundance

Short- and long-term trends in abundance are a primary indicator of risk. Trends may be calculated from a variety of quantitative data, which are discussed in detail in specific sections below. Interpretation of trends in terms of population sustainability is difficult for a variety of reasons: First, eulachon are harvested in fisheries, and shifting harvest goals or market conditions directly affect trends in spawning abundance and catch. Second, environmental fluctuations on short timescales affect trend estimates, especially for shorter trends and relatively short-lived species like eulachon.

### Recent Events

A variety of factors, both natural and human-induced, affect the degree of risk facing eulachon populations. Because of time lags in these effects and variability in populations, recent changes in any of these factors may affect current risk without any apparent change in available population statistics. Thus, consideration of these effects must go beyond examination of recent abundance and trends. Yet forecasting future effects is rarely straightforward and usually involves qualitative evaluations based on informed professional judgment. Events affecting populations may include natural changes in the environment or human-induced changes, either beneficial or detrimental.

It is generally accepted that important shifts in ocean-atmosphere conditions occurred about 1977 and again in 1998 that affected North Pacific marine ecosystems. Several studies have described decadal-scale oscillations in North Pacific climatic and oceanic conditions (Mantua and Hare, 2002). These changes have been associated with recruitment patterns of several groundfish species and Pacific herring (McFarlane *et al.*, 2000). Increases in eulachon in the Columbia, Fraser, and Klinaklini rivers in 2001–2002 may be largely a result of the more favorable ocean conditions for eulachon survival during the transition from larvae to juvenile when these broods entered the ocean in 1998–2000.

At this time, we do not know whether recent shifts in climate/ocean conditions represent a long-term shift in conditions that will continue affecting populations into the future or short-term environmental fluctuations that can be expected to be reversed in the near future. Although recent conditions appear to be within the range of historic conditions under which eulachon

populations have evolved, the risks associated with poor climate conditions may be exacerbated by human influence on these populations (Lawson, 1993).

### Distribution and Abundance

Historically important spawning areas for eulachon south of the Nass River include the Klamath, Columbia, and Fraser Rivers, and numerous coastal rivers in British Columbia (Willson *et al.* 2006).

#### Klamath and other Northern California Rivers

There has been no long-term monitoring program targeting eulachon in California, making the assessment of historical abundance and abundance trends difficult (Gustafson *et al.*, 2008). Ethnographic studies, pioneer diaries, interviews with local fishers, personal observations and communications from managers, and newspaper accounts are therefore the best scientific and commercial information available that provide documentation of eulachon occurrence in the Klamath River and other rivers on the Northern California coast.

Hubbs (1925) and Schultz and DeLacy (1935), leading ichthyologists of their day, described the Klamath River in Northern California as the southern limit of the range of eulachon. More recent compilations state that large spawning aggregations of eulachon were reported to have once regularly occurred in the Klamath River (Fry 1979, Moyle *et al.*, 1995; Larson and Belchik 1998; Moyle 2002; Hamilton *et al.*, 2005) and on occasion in the Mad River (Moyle *et al.*, 1995; Moyle 2002) and Redwood Creek (Redwood Creek is located south of the Klamath River near the town of Orick, California) (Moyle *et al.*, 1995). In addition, Moyle *et al.* (1995) and Moyle (2002) stated that small numbers of eulachon have been reported from the Smith River (the Smith River is located just south of the Oregon/California border). California Department of Fish and Game's "Status Report on Living Marine Resources" document (Sweetnam *et al.*, 2001) stated that "The principal spawning run [of eulachon] in California is in the Klamath River, but runs have also been recorded in the Mad and Smith Rivers and Redwood Creek."

Eulachon have been occasionally reported from other freshwater streams of California. Jennings (1996) reported observations of adult eulachon in creeks tributary to Humboldt Bay, California in May of 1977. Although Minckley *et al.* (1986) indicate that eulachon were native to the Sacramento River and drainages within the south California Coastal to Baja California region, no

verifying references or actual observations for these assertions were given. Recently, Vincik and Titus (2007) reported on the capture of a single mature male eulachon in a screw trap at RM 142 on the Sacramento River.

The California Academy of Sciences (CAS) ichthyology collection database lists eulachon specimens collected from the Klamath River in February 1916 and March 1947 and 1963, and in Redwood Creek in February 1955 (see CAS online collections database at <http://research.calacademy.org/research/Ichthyology/collection/index.asp>). A search of available online digital newspaper resources revealed an early account of eulachon in the Klamath River in a newspaper account in 1879 and runs large enough to be noted in local newspaper accounts occurred in the Klamath River in February 1919, March 1968, and April 1963 and 1969; in Redwood Creek in April 1963 and 1967; and in the Mad River in April 1963 (see draft BRT report Appendix B). An early memoir by a traveler surveying timber resources on the Klamath River reported eulachon being harvested (15–20 pounds in a single dipnet haul) by Yurok tribal members in the early 1890s (Pearsall, 1928).

Eulachon were of great cultural and subsistence importance to the Yurok Tribe on the Lower Klamath River (Trihey and Associates, 1996) and the Yurok People consider eulachon to be a Tribal Trust Species (Trihey and Associates, 1996; Larson and Belchik, 1998). Eulachon once supported popular recreational fisheries in Northern California rivers, but were never commercially important in California. The only reported commercial catch of eulachon in Northern California occurred in 1963 when a combined total of 25 metric tons (56,000 lbs) was landed from the Klamath River, the Mad River, and Redwood Creek (Odemar, 1964). Larson and Belchik (1998), report that eulachon have not been of commercial importance in the Klamath and are totally unstudied as to their run strengths.

Larson and Belchik (1998) also reported that according to accounts of Yurok Tribal elders, the last noticeable runs of eulachon were observed in the Klamath River in 1988 and 1989 by Tribal fishers. Most fishers interviewed perceived a decline in the mid to late 1970s, while about a fifth thought it was in the 1980s. A minority of those interviewed noticed declines in the 1950s and 1960s. Larson and Belchik (1998) further stated that "in December 1988 and May 1989, a total of 44 eulachon were identified in outmigrant

salmonid seining operations in and above the Klamath River estuary (CDFG unpublished seining data)” and that only a single eulachon specimen (in 1996) was positively identified between 1991 and 1998 on the Klamath River. As detailed in Larson and Belchik (1998), the Yurok Tribal Fisheries Program spent over 119 hours of staff time from 5 February to 6 May 1996 sampling for eulachon in the lower Klamath River at five different sites, where eulachon had been noted in the past, without encountering a single eulachon. However, one eulachon was captured by a Yurok Tribal member near the mouth of the Klamath River in 1996 (Larson and Belchik, 1998). Sweetnam *et al.* (2001) stated that “In recent years, eulachon numbers seem to have declined drastically; so they are now rare or absent from the Mad River and Redwood Creek and scarce in the Klamath River.” They also stated that, “the eulachon and its fishery have been largely ignored in the past” in California. Sweetnam *et al.*, 2001 suggest the perceived lack of eulachon in the Klamath River, currently and in the recent past, represents a low point in a natural cycle, though they also admit that the declines may be due to human activities. In January 2007, six eulachon were reportedly caught by tribal fishermen on the Klamath River (Dave Hillemeier, Yurok Tribe, pers. comm.).

The BRT discussed several possible interpretations of the available information. In particular, the BRT discussed the possibility that, historically, runs of eulachon in the Klamath River were episodic and perhaps only occasionally large enough to be noticed. This interpretation, however, is inconsistent with the numerous anecdotal but independent reports of regular large runs. The BRT also considered the possibility that eulachon still occur in low but viable numbers in Northern California rivers but are not frequently observed because of the absence of a formal monitoring program, or that some eulachon may spawn in estuarine environments and are therefore not observed in the riverine environment. These interpretations are inconsistent with the following facts: state and tribal biologists are monitoring rivers where eulachon were historically reported but are not regularly finding eulachon; sizable spawning runs of eulachon attract large numbers of predators, which are readily observable and were historically well-reported (see above); and eulachon are not known to spawn in estuaries in large numbers.

After considering these possible interpretations of the available information, the BRT concluded that the explanation most consistent with the evidence is that Klamath River eulachon runs used to be regular and large enough to be readily noticeable and now are intermittent, small, and sporadic. In particular, various accounts written by California Department of Fish and Game personnel (Fry, 1979; Sweetnam *et al.*, 2001; CDFG, 2008), Yurok Tribal Fisheries Department personnel (Larson and Belchik, 1998), the National Resource Council’s Committee on Endangered and Threatened Fishes in the Klamath River Basin (NRC, 2004), and available academic literature (Moyle *et al.*, 1995; Moyle, 2002; Hamilton *et al.*, 2005) describe accounts of the past occurrence of eulachon in the Klamath River and their subsequent decline. Based on the available information, the BRT was unable to estimate the historical abundance of eulachon in northern California, but found no reason to discount the veracity of these anecdotal sources, which span a period of approximately 100 years and are consistent in their description of noticeable runs of eulachon having once ascended the Klamath River.

Likewise, although the BRT was concerned about the absence of a contemporary monitoring program for eulachon, the available information strongly indicated that noticeable runs of eulachon are not currently spawning in Klamath River or other northern California rivers. In particular, the BRT thought it likely that if eulachon were returning in any substantial numbers it would be reported by local residents or those engaged in recreation, research, or management on rivers in Northern California. The BRT noted that large eulachon runs tend to attract the attention of fishers, and the previous runs on the Klamath River were readily noticeable (e.g., “the fish moved up in huge swarms, followed by large flocks of feeding seabirds” (Moyle, 2002)). The BRT therefore concluded that the available information was most reasonably interpreted as indicating that noticeable, regularly returning runs of eulachon used to be present in the Klamath River, but have been rare or sporadic for a period of several decades.

Although the BRT was reasonably confident that eulachon have declined substantially in Northern California, it is also clear that they have not been totally absent from this area in recent years. In particular, recent reports from Yurok Tribal fisheries biologists of a few eulachon being caught incidentally in other fisheries on the Klamath in 2007 indicates eulachon still enter the

Klamath River on occasion in low numbers. We agree that the BRT’s conclusions regarding eulachon presence and declines in the Klamath and other Northern California rivers are the most persuasive interpretation of the best available scientific and commercial information.

#### Columbia River

The Columbia River and its tributaries support the largest known eulachon run. Although direct estimates of adult spawning stock abundance are unavailable, records of commercial fishery landings begin in 1888 and continue as a nearly uninterrupted data set to the present time (Gustafson *et al.*, 2008). A large recreational dipnet fishery for which catch records are not maintained has taken place during the same time as the commercial fishery (WDFW and ODFW, 2001).

Although commercial eulachon landings do not provide a quantitative measure of spawning stock abundance, since they can be driven by market and environmental conditions as well as population abundance, the WDFW and ODFW Joint Columbia River Management Staff (JCRMS, 2007) has concluded that “they do provide a useful measure of the relative annual run strength.” In particular, State fisheries managers of Columbia River eulachon use commercial landings to judge whether population trends are upward, neutral, or downward (JCRMS, 2007). In their report, the BRT agreed with this use of commercial landings data.

The Columbia River, estimated to have historically represented fully half of the taxon’s abundance, experienced a sudden decline in its commercial eulachon fishery landings in 1993–1994 (ODFW and WDFW, 2001; JCRMS, 2007). Commercial catch levels were consistently high (usually greater than 500 metric tons and often greater than 1,000 metric tons) for the three quarters of a century from about 1915 to 1992. In 1993, the catches declined greatly to 233 metric tons and declined further to an average of less than 40 metric tons between 1994 and 2000. From 2001 to 2004, the catches increased to an average of 266 metric tons, before falling to an average of less than 5 metric tons from 2005 to 2008 (JCRMS, 2007). Some of this pattern is due to fishery restrictions, which were in turn put in place due to sharp declines in apparent abundance. Persistent low returns and landings of eulachon in the Columbia River from 1993 to 2000 prompted the States of Oregon and Washington to adopt a Joint State Eulachon Management Plan in 2001 that provides



for restricted harvest management when parental run strength, juvenile production, and ocean productivity indicate a poor return is likely (WDFW and ODFW, 2001). The fishery has operated at the most conservative level allowed for in the Joint State Eulachon Management Plan since 2005 owing to the low level of returns during this time period (JCRMS, 2005; 2006; 2007). Based on these data and the interpretation of them described above, the BRT concluded that available catch and effort information indicate an abrupt decline in eulachon abundance in the early 1990's, with no evidence that the population has returned to its former level since then.

#### Fraser River

As in the Columbia River, a long-term data set for commercial landings dating back into the 1880s exists for the Fraser River in British Columbia. Between 1941 and 1996 commercial landings averaged about 83 metric tons, but ranged as high as 421 metric tons (Hay and McCarter, 2000). For much of this period the commercial fishery landings are not a good indicator of relative abundance, since landings were largely driven by market demand (Moody, 2008). Following a similar pattern to that of the Columbia River, eulachon abundance began to decline in 1993 to the point where the fishery was closed in 1997. This closure was also partially due to what the Canadian DFO perceived to be a lack of ability to control the fishery under the existing regulations (Hay *et al.*, 2002). Since then only minor commercial landings have been allowed in only two of the last ten years (2002 and 2004) (DFO, 2006). Due to poor returns, recreational and First Nation subsistence fisheries have also been suspended on the Fraser River since 2005.

In 1996, the Canadian Department of Fisheries and Oceans (DFO) began to estimate spawning stock abundance, independent of the fishery landings, using mean egg and larval plankton density and river discharge rates (gathered throughout a seven week outmigrant period at five locations) in combination with known relative fecundity (egg production per gram of female) and sex ratio. Over the three-generation time of approximately 10 years, the overall biomass of the Fraser River eulachon population has undergone a 92.5 percent decline (1998, 134 metric tons; 2008, 10 metric tons). The most recent population assessment of Fraser River eulachon by Fisheries and Oceans Canada (DFO, 2007) stated that "despite limited directed fisheries in recent years, the Fraser River

eulachon population remains at a precariously low level and has failed to recover from its collapse." Subsequent to this statement, spawner biomass for the 2008 eulachon run in the Fraser River was estimated at 10 metric tons (see draft BRT report citing data at [http://www-sci.pac.dfo-mpo.gc.ca/herring/herspawn/pages/river1\\_e.htm](http://www-sci.pac.dfo-mpo.gc.ca/herring/herspawn/pages/river1_e.htm)), which equates to a maximum escapement of approximately 300,000 fish.

#### Coastal British Columbia Rivers

Other coastal rivers and inlets in British Columbia south of the Nass River with historically consistent eulachon runs include rivers in Knight (Klinaklini River), Kingcome (Kingcome River), and Rivers (Wannock, Chuckwalla, and Kilbella rivers) inlets; rivers flowing into Dean (Bella Coola, Dean, and Kimsquit rivers) and Douglas (Kitimat and Kildala rivers) channels; rivers flowing into Gardner Canal (Kemano, Kowesas, and Kitlope rivers); and the Skeena River (Hay and McCarter, 2000; Willson *et al.*, 2006). Spawner biomass (pounds or metric tons) and/or total spawner counts (numbers of adult fish) are available for the Klinaklini River (1995), Kingcome River (1997), Wannock/Kilbella rivers (2005–2006), Bella-Coola River (2001–2004), Kitimat River (1993–1996, 1998–2005), and Skeena River (1997). Many of these coastal rivers also have a long history of anecdotal reports of eulachon runs or sporadic records of First Nations' harvest. Some areas, such as the Kingcome and Knight Inlet, have spawning stock abundance estimates for a single year but no trends can be determined from these single data points. The BRT concluded that available catch records, the extensive ethnographic literature, and anecdotal information all indicate that eulachon were probably present in larger annual runs in the past and that current run sizes of eulachon appear inconsistent with the historic level of eulachon oil or "grease" production, which is extensively documented in the ethnographic literature (Macnair, 1971; Codere, 1990).

Hay and McCarter (2000) reported that annual runs of eulachon return on a regular basis to the Wannock, Chuckwalla, and Kilbella rivers in Rivers Inlet on the Central Coast of British Columbia. The spawning stock biomass of eulachon in Rivers Inlet was estimated using scientific survey methods in 2005 and 2006. In 2005, an estimated 2,700 adults returned to the Wannock River, based on the capture of only eleven adults during spawner abundance surveys (Burrows, 2005 as

cited in Moody, 2008). An additional three adult eulachon were taken on the Kilbella River in 2005 (Burrows, 2005, as cited in Moody, 2008). Moody (2008) stated that this adult spawner survey was repeated in 2006 and although no adults were captured, an estimated 23,000 adult spawners returned. Some limited information is available for First Nation harvest in the 1960s and 1970s; Moody (2008) reported that catches were 1.81, 2.27, and 4.54 metric tons, in 1967, 1968, and 1971, respectively. The BRT determined that available recent estimates of spawning stock abundance, catch records, ethnographic literature (Hilton, 1990), and anecdotal information indicate that Rivers Inlet eulachon were present in larger annual runs in the past.

The Bella Coola, Dean, and Kimsquit rivers in Dean Channel support regular eulachon runs (Hay and McCarter, 2000). Moody (2007) reports relative abundance estimates, based on egg and larval surveys similar to those used on the Fraser River, for the Bella Coola River in 2001 (0.039 metric tons), 2002 (0.045–0.050 metric tons), 2003 (.016 metric tons), and 2004 (0.0072 metric tons). Nuxalk First Nation subsistence fishery landings of eulachon from the Bella Coola River show an average catch of 18 metric tons between 1948 and 1984, with a low of 0.3 metric tons in 1960 and a high of nearly 70 metric tons in 1954, based on data available in Hay (2002). These data suggest that recent (2001–2004) spawner biomass in Bella Coola River is approximately two orders of magnitude less than the average First Nations eulachon landings were between 1948 and 1984. According to Moody (2007), it has been nine years since the last First Nations fishery occurred on the Bella Coola River.

The BRT concluded that that available spawning stock biomass data collected since 2001, catch records, extensive ethnographic literature, and anecdotal information indicates that Bella Coola River and Dean Channel eulachon in general were present in much larger annual runs in the past. In addition, the present run sizes of eulachon appear inconsistent with the historic level of grease production that is extensively documented in the ethnographic literature on the Nuxalk First Nations Peoples (Kennedy and Bouchard, 1990; Moody, 2008).

The Kitimat and Kildala rivers in Douglas Channel support regular eulachon runs (Hay and McCarter, 2000). Spawning stock biomass of eulachon in the Kitimat River was estimated using scientific survey methods in 1993 and First Nations fisheries landings are available for



1969–1972. Between 1969 and 1972, First Nations fisheries landings of eulachon ranged from 27.2 to 81.6 metric tons (Moody, 2008). The First Nations eulachon fishery reportedly came to an end in 1972 as pollution by industrial (pulp mill) and municipal effluent discharges made the eulachon unpalatable (Pederson *et al.*, 1995; Moody, 2008). Pederson *et al.* (1995) estimated a total spawning biomass in the Kitimat River of 22.6 metric tons or about 514,000 individual eulachon in 1993. According to Moody (2008), catch-per-unit-effort of eulachon on the Kitimat River, as presented in EcoMetrix (2006), declined from 50–60 fish per 24 hour gill net set in 1994–1996 to less than 2 eulachon per gill net set since 1998. According to EcoMetrix (2006, as cited in Moody, 2008), abundance of eulachon from 1994 to 1996 ranged between 527,000 and 440,000 individual spawners, and from 1998 to 2005 ranged between 13,600 and less than 1,000. Based on anecdotal information, Moody (2008) stated that the last strong run returned to the Kitimat River in 1991 and runs from 1992–1996 were estimated at half the size of 1991. The BRT concluded that given this information, Kitimat River, and Douglas Channel eulachon in general, were present in larger annual runs in the past and that present run size estimates of eulachon appear inconsistent with the historic level of grease production extensively documented in the ethnographic literature (Hamori-Torok, 1990).

The Kemano, Kowesas, and Kitlope rivers in Gardner Canal support regular runs of eulachon with the Kemano River being the primary production area. First Nations fisheries landings on the Kemano River are available for 1969–1973 and 1988–2007 (Moody, 2008). Rio Tinto Alcan operates a hydroelectric generation facility on the Kemano River and, as part of an environmental management plan, has funded monitoring of eulachon since 1988 (Lewis *et al.*, 2002). From 1988 to 1998, landings ranged from 20.6 to 93.0 metric tons (average of 57 metric tons) (Lewis *et al.*, 2002; Moody, 2008). However, according to Moody (2008), no run occurred in 1999. First Nations landings in the Kemano River were low from 2000 to 2002, but improved to between 60 and 80 metric tons in 2003 and 2004 (ALCAN, 2005; Moody, 2008); however, anecdotal information indicate that eulachon returns were not detected in the Kemano River in either 2005 or 2006 (ALCAN, 2006, 2007; EcoMetrix, 2006, as cited in Moody, 2008). Catch-per-unit-effort data showed similar trends to

the First Nation fishery landings, with a sharp drop from about 2.5 metric tons per set in 1998 to less than 0.5 metric tons per set from 1999–2002, a rebound to between 0.5 and 1 metric tons per set in 2003–2004, and no fish caught in 2005–2007 (Lewis *et al.*, 2002; Moody, 2008).

The BRT concluded that available catch-per-unit-effort data collected since 1988, First Nations catch records, extensive ethnographic literature, and anecdotal information indicates that Kemano River, and Gardner Canal eulachon in general, were present in larger annual runs in the past and that present run sizes of eulachon appear inconsistent with the historic level of grease production that is well documented for this region in the ethnographic literature (Hamori-Torok, 1990).

The Skeena River and its tributaries have supported eulachon runs (Moody, 2008), but they reportedly were small, of short duration, and difficult to harvest because of the large size of the mainstem Skeena River (Stoffels, 2001; Moody, 2008). Lewis (1997) estimated the total spawning stock abundance of the Skeena River eulachon at only 3.0 metric tons in 1997. A small commercial eulachon fishery operated between 1924 and 1946 (landings ranged from 15.4 metric tons in 1924 to 0.9 metric tons in 1935) (Moody, 2008). However, total landings records (both commercial and subsistence) were as high as 100 metric tons at one time and averaged 27.5 metric tons from 1900–1941 (Canada Department of Marine and Fisheries, Annual Report, Fisheries (1900–1916); and Statistics Canada, Fisheries Statistics of Canada (1917–1941)). It is likely that demands of the local market have driven subsistence and past commercial fisheries statistics on the Skeena River, thus the BRT did not believe these data were a good index of abundance. Moody (2008) reported anecdotal information indicating that very few Skeena River eulachon were observed between 1997 and 1999, a good run occurred in 2005, and virtually no eulachon were observed in 2006 (Moody, 2008). Although unable to draw strong conclusions, the BRT concluded that available catch records and anecdotal information indicate that Skeena River eulachon were present in larger annual runs in the past that at one time supported a fishery. Although the current status of this population is unknown, the BRT concluded that anecdotal information indicates declines in abundance have occurred.

### Demographic Risk Summary

Eulachon in the southern DPS were assessed according to the four viability criteria of abundance, productivity, diversity, and spatial structure (including connectivity). These four parameters are universal indicators of species' viability, and individually and collectively function as reasonable predictors of extinction risk (McElhany *et al.*, 2000) that have been used extensively in extinction risk analysis for endangered species.

### Abundance

The BRT was concerned that although eulachon are a relatively poorly monitored species, almost all of the available information indicates that the southern DPS of eulachon has experienced an abrupt decline in abundance throughout its range. The BRT was particularly concerned that two large spawning populations, in the Columbia and Fraser Rivers, have both declined to what appear to be historically low levels. The BRT was also concerned that there is very little monitoring data available for Northern California eulachon, but determined that the available information suggests that eulachon in Northern California experienced an abrupt decline several decades ago. The BRT was concerned that recent attempts to estimate actual spawner abundance in some rivers in B.C. that are known to have supported significant First Nations fisheries in the past have resulted in very low estimates of spawning stock.

In addition, the BRT was concerned that the current abundance of the many individual populations within the DPS may be sufficiently low to be an additional risk factor, even for populations (such as the Columbia and Fraser) where the absolute population size seems large compared to many other at-risk fish populations. Of relevance to this issue are recent reviews of extinction risk in marine fishes illustrating that forage fish are not immune to risk of extirpation at the population scale (Dulvy *et al.*, 2003; Reynolds *et al.*, 2005). Hutchings (2000; 2001a; 2001b) and others (Dulvy *et al.*, 2003; Mace and Hudson, 1999; Hutchings and Reynolds, 2004) cite empirical analyses indicating that marine fishes likely have similar extinction probabilities to those of non-marine taxa. In evaluating this issue, the BRT concluded that eulachon (and other similar forage fishes) (see Dulvy *et al.*, 2004) may be at significant risk at population sizes that are a fraction of their historical levels but are still large compared to what would be considered

normal for other ESA listed species. The BRT believe that high eulachon minimum viable population sizes are necessary to: (1) ensure a critical threshold density of adult eulachon are available during breeding events for maintenance of normal reproductive processes, (2) produce enough offspring to counteract high in-river egg and larval mortality and planktonic larval mortality in the ocean, and (3) produce enough offspring to buffer against the variability of local environmental conditions which may lead to random "sweepstakes recruitment" events where only a small minority of spawning individuals contribute to subsequent generations. In species with a life history pattern like eulachon, the genetically effective population size can be several orders of magnitude lower than the census size (Hedgecock, 1994; ICES, 2004). Based on the best available information summarized above, the minimum viable census sizes for spawning populations may therefore be on the order of 50,000 to 500,000 (Dulvy *et al.*, 2004). The BRT was concerned that in a number of sub-areas of the DPS (Klamath, Fraser River, Bella Coola River, Rivers Inlet, etc.) population sizes of eulachon are below what would be considered minimum viable population sizes for highly fecund, broadcast-spawning species.

#### Productivity

The BRT noted that variable year-class strength in marine fishes with pelagic larvae is dependent on survival of larvae prior to recruitment and is driven by match-mismatch of larvae and their planktonic food supply (Hjort, 1914; Lasker, 1975; Sinclair and Tremblay, 1984), oceanographic transport mechanisms (Parrish *et al.*, 1981), variable environmental ocean conditions (Shepherd *et al.*, 1984; McFarlane *et al.*, 2000), and predation (Bailey and Houde, 1989). If time of spawning does not coincide with river conditions conducive to successful fertilization and egg survival, and to the appearance of larval prey species in the oceanic environment, the result would be high rates of environmentally-driven egg and larval mortality. The BRT was concerned that there is evidence that climate change is leading to relatively rapid changes in both oceanic and freshwater environmental conditions that eulachon are unable to tolerate. Eulachon are basically a cold-water species and are adapted to feed on a northern suite of copepods in the ocean during the critical transition period from larvae to juvenile and much of their recent recruitment failure may be traced to mortality during this critical

period. Recent studies show a shift in the suite of copepod species available to eulachon toward a more southerly species assemblage (Mackas *et al.*, 2001; 2007; Hooff and Peterson, 2006), contributing to a mismatch between eulachon life history and prey species. It is also likely that pelagic fish with their shorter life cycles may be less resilient to long-term climatic changes than longer-lived demersal species.

The ability of the Columbia River eulachon population to respond rapidly to the good ocean conditions of the late 1999–early 2002 period illustrates the species' resiliency, which the BRT viewed as providing the species with a buffer against future environmental perturbations. The productivity potential or intrinsic rate of increase of eulachon (Musick *et al.*, 2000), as indicated by life history characteristics such as low age-at-maturity, small body size, and planktonic larvae, was recognized by the BRT as likely conferring eulachon with some resilience to extinction as they retain the ability to rapidly respond to favorable ocean conditions.

#### Diversity

In terms of threats related to diversity, the BRT was concerned that not only are eulachon semelparous (spawn once and die) but if recent estimates of age structure in eulachon are correct (Clarke *et al.*, 2007), then spawning adults—particularly in southern areas such as the Columbia and Fraser rivers—may be limited to a single age class, which likely increases their vulnerability to perturbations and provides less of a buffer against year-class failure than species such as herring that spawn repeatedly and have variable ages at maturity. The BRT was also concerned about the apparently very low abundance of the Klamath River sub-population, which might be expected to have unique adaptations to conditions at the southernmost extent of the range, and about the potential loss of biocomplexity in Fraser River eulachon due to contraction of spawning locations, as documented by Higgins *et al.* (1987).

The BRT noted some positive signs including observations that eulachon continue to display variation in spawn timing, age-at-maturity, and spawning locations, and a high degree of biocomplexity (i.e., many spawning locations and spawn-timing variation) in the Columbia River, which may buffer this population from freshwater environmental perturbations.

#### Spatial Structure

The BRT also had concerns about risks related to spatial structure and distribution. In particular, because the major spawning populations within the DPS appear to have declined substantially, the BRT was concerned that if some formerly significant populations, such as the Klamath River, become extirpated, there would be less opportunity for successful re-colonization. In addition, the apparent decline of populations in Northern California may result in contraction of the southern portion of the DPS's range. The BRT also noted that several populations that used to support significant First Nations fisheries on the British Columbia coast have declined to very low levels (e.g., Bella Coola River and Wannock River). Positive signs for spatial structure and connectivity noted by the BRT include considerations that eulachon appear to have the potential to re-colonize some areas, given their apparent ability to stray from the natal spawning area, at least within rivers sharing the same estuary. In addition, the perceived historical spatial structure of the DPS, with the possible exception of the Klamath River, remains intact.

The BRT noted several recent events that appear likely to impact eulachon. Global patterns suggest the long-term trend is for a warmer, less productive ocean regime in the California Current and the Transitional Pacific. The recent decline in abundance or relative abundance of eulachon in many systems coupled with the probable disruption of metapopulation structure may make it more difficult for eulachon to adapt to warming ocean conditions. In addition, warming conditions have allowed both Pacific hake (Phillips *et al.*, 2007) and Pacific sardine (Emmett *et al.*, 2005) to expand their distributions to the north, increasing predation on eulachon by Pacific hake, and competition for food resources with both species. However, cold ocean conditions in 2008 suggest that this may have been a good year for eulachon recruitment. The BRT concluded that the net effects of these recent positive and negative events are likely to be negative.

#### BRT Extinction Risk Assessment Conclusion

The BRT was asked to use three categories of risk to describe the species' status – "high risk" of extinction; "moderate risk" of extinction; or "not at risk" of extinction. To allow individuals to express uncertainty in determining the overall level of extinction risk facing the species, the BRT adopted the "likelihood point" method referred to

previously. The BRT's scores for overall risk to the southern DPS of eulachon, throughout all of its range, were heavily weighted to "moderate risk," with this category receiving 60 percent of the likelihood points. The "high risk" category received 32 percent of the likelihood points, and the "not at risk" category received 8 percent of the points.

#### Summary of Factors Affecting the Southern DPS of Eulachon

As described above, Section 4(a)(1) of the ESA and NMFS's implementing regulations (50 CFR 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. According to the BRT, the primary factors responsible for the decline of the southern DPS of eulachon are the destruction, modification, or curtailment of habitat and inadequacy of existing regulatory mechanisms. The following discussion briefly summarizes the BRT's findings regarding threats to the eulachon southern DPS. More details can be found in the draft BRT report (Gustafson *et al.*, 2008). For analytical purposes, the BRT identified and ranked threats for the four primary populations of this DPS: mainland British Columbia Rivers south of the Nass River, Fraser River, Columbia River, and Klamath River.

#### *The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

The BRT identified changes in ocean conditions due to climate change as the most significant threat to eulachon and their habitats. They ranked this as the most significant threat to all of the DPS populations. Marine, estuarine, and freshwater habitat in the Pacific Northwest has been influenced by climate change over the past 50–100 years, and this change is expected to continue into the future. Average annual Northwest air temperatures have increased by approximately 1°C since 1900, or about 50 percent more than the global average warming over the same period (see ISAB, 2007 for a recent review). The latest climate models project a warming of 0.1 to 0.6°C per decade over the next century (ISAB, 2007). Analyses of temperature trends

for the U.S. part of the Pacific Northwest (Mote *et al.*, 1999); the maritime portions of Oregon, Washington, and British Columbia (Mote, 2003a); and the Puget Sound-Georgia Basin region (Mote, 2003b) have shown that air temperature increased 0.8 C, 0.9 C, and 1.5 C, in these respective regions during the twentieth century. Warming in each of these areas was substantially greater than the global average of 0.6 C (Mote, 2003b). This change in surface temperature has already modified, and is likely to continue to modify, freshwater, estuarine, and marine habitats of eulachon.

Climate change is likely to have significant effects on the large river systems that are essential to eulachon production. Ferrari *et al.* (2007) predict that the Fraser River will increase in temperature over the next century in all summer months with a maximum increase in August temperatures of 0.14°C per decade. Peak flows in the Fraser River may also shift during this timeframe (Morrison *et al.*, 2002), potentially altering the timing of freshets that coincide with eulachon spawning. It is uncertain whether eulachon would adjust spawn timing to account for shifts in peak flows. In the Columbia River, climate change is likely to result in decreased snowpack, increased peak flows, decreased base flow, and increased water temperatures (ISAB, 2007). As with the Fraser River, peak flows in the Columbia and its tributaries are likely to shift, possibly decoupling eulachon spawning and spring freshets.

Climate change could cause problems for the eulachon spawning in the other areas throughout the range of this DPS. In British Columbia, many of the coastal systems that support eulachon are fed by glaciers. The size of these glaciers and other glaciers at mid-latitude areas around the world has been decreasing (Meier *et al.*, 2003; Barry, 2005). It is uncertain what effect reduction in glacier size might have on the hydrology of these systems, but in most cases a shift in peak stream flow timing would occur. Mote (2003) reports that anticipated reductions in snowpack in the Georgia Basin/Puget Sound area are likely to alter hydrologic patterns, possibly reducing peak and/or base stream flows. Again, shifting stream flow patterns may cause problems for eulachon spawning.

Changes in the marine environment due to climate change are also likely to affect eulachon. Eulachon generally inhabit cool to cold ocean waters and feed on cold water assemblages of copepods and other marine invertebrates (Willson *et al.*, 2006). The

consequences for Pacific zooplankton communities of warming trends in the high to mid-latitudes could be substantial, but their magnitude and trajectory are not yet known (Mackas *et al.*, 2007). Increases in ocean temperatures off the coast of the Pacific Northwest could alter the abundance and composition of copepod communities, thus reducing the amount of food available for eulachon, particularly larvae. Zamon and Welch (2005) reported these types of rapid shifts in zooplankton communities in the Northeast Pacific during recent El Niño-La Niña events. Warming ocean conditions may also lead to a general reduction in eulachon forage. For instance, Roemmich and McGowan (1995) noted an 80 percent reduction of macrozooplankton biomass off Southern California between 1951 and 1993. Warming ocean temperatures could also facilitate the northward expansion of warm-water eulachon predators and competitors for food resources, such as Pacific hake (Rexstad and Pikitch, 1986; McFarlane *et al.*, 2000; Phillips *et al.*, 2007).

Changes in the freshwater and marine environment due to climate change are likely to cause adverse effects on eulachon abundance, productivity, spatial distribution, and diversity. There is still a great deal of uncertainty associated with predicting specific changes in timing, location, and magnitude of future climate change. It is also likely that the intensity of climate change effects on eulachon will vary by geographic area.

The BRT identified dams and water diversions as moderate threats to eulachon in the Columbia and Klamath Rivers where hydropower generation and flood control are major activities, and a low to moderate risk for eulachon in the Fraser and mainland British Columbia rivers where dams are less common. Dams can slow or block eulachon migration. Dams and water divisions alter the natural hydrograph of river systems, in many cases reducing the magnitude of spring freshets with which eulachon have evolved. Dams can also impede or alter bedload movement, changing the composition of river substrates important to spawning eulachon.

Water quality degradation is common in some areas occupied by southern DPS eulachon. In the Columbia and Klamath systems, large-scale impoundment of water has increased water temperatures, potentially altering the water temperature during eulachon spawning periods (NMFS, 2008). Numerous chemical contaminants are also present in freshwater systems where eulachon

spawn, but the exact effect these compounds may have on spawning and egg development is unknown (NMFS, 2008).

The BRT identified dredging as a low to moderate threat to eulachon in the Fraser and Columbia Rivers and a low severity threat for eulachon in mainland British Columbia rivers as less dredging for commercial shipping occurs in these areas. Dredging during eulachon spawning would be particularly detrimental, as eggs associated with benthic substrates are likely to be destroyed.

#### *Overutilization for Commercial, Recreational, Scientific or Educational Purposes*

Commercial harvest of eulachon in the Columbia and Fraser rivers was identified as a low to moderate threat. Current harvest levels are orders of magnitude lower than historic harvest levels, and a relatively small number of vessels operate in this fishery. No significant commercial fishing for eulachon occurs in the Klamath or British Columbia rivers north of the Fraser. The BRT ranked recreational and Tribal/First Nations harvest of eulachon as a very low to low severity threat to eulachon in all four DPS populations. It is likely that these harvests have a negligible effect on population abundance.

#### *Commercial Fisheries*

In Oregon, commercial fishing for eulachon is allowed in the Pacific Ocean, Columbia River, Sandy River, and Umpqua River. In the Pacific Ocean, eulachon can be harvested year-round using any method otherwise authorized to harvest food fish in the open ocean. In the Sandy River, commercial fishing with dip nets is allowed in a small portion of the lower river downstream from the U.S. Route 30 Alternate bridge at Troutdale Oregon, year-round, 7 days a week, 24 hours a day. The last large harvest of eulachon in the Sandy River occurred in 1985 (304,500 lb (138 metric tons)), with a moderate harvest occurring in 2003 (23,000 lb (10 metric tons)) (John North, ODFW, pers. comm.). In the Umpqua River, commercial fishing for eulachon is allowed year-round and 24 hours a day with dip nets and gill nets not more than 600 ft (183 m) in length and of a mesh size no more than 2 inches (51 mm). Those areas of the Umpqua River not closed to commercial fishing for shad (upstream from approximately river mile 21 (34 km)) are open for commercial eulachon fishing. However, commercial fishing for eulachon has not occurred for many years in the Umpqua

River (John North, ODFW, pers. comm.). In the mainstem Columbia River, permissible commercial gear includes gill nets with a mesh size of no more than 2 inches (51 mm), dip nets having a bag frame no more than 36 inches (91 cm) in diameter, and small trawl nets (Oregon Administrative Rule 635-004-0075). In the past several years, the Columbia River commercial fishery has been open 7 days a week in December and 2 days a week from January 1–March 31. Commercial fishing in the Columbia River is now managed according to the joint ODFW and WDFW management plan for eulachon (ODFW and WDFW, 2001). Under this plan, three eulachon harvest levels can be authorized based on the strength of the prior years' parental run, resultant juvenile production estimates, and ocean productivity indices. Current effort in the Columbia River mainstem fishery is typically low (less than 10 vessels) (John North, ODFW, pers. comm.).

In Washington, year-round commercial fishing for eulachon is allowed in the Columbia and Cowlitz rivers. In the Columbia River, commercial fishing for eulachon is permitted during 9 hour periods on Mondays and Thursdays. In the Cowlitz River, commercial fishing is allowed for 6 hour periods on Sunday and Wednesday nights. The Canadian DFO did not authorize any commercial fishing for eulachon in 2008 due to low abundance. Historically, commercial fishing for eulachon occurred at low levels in the Fraser River (as compared to the Columbia River). DFO has only allowed a commercial harvest of eulachon in the Fraser River twice since 1997 (DFO, 2008).

#### *Recreational Fishing*

The states of Oregon and Washington have altered sport fishing regulations in the past due to declining eulachon abundance (WDFW and ODFW, 2001). During the eulachon run, the ODFW allows recreational fishers to capture 25 lb (11 kg) per day of eulachon, using a dip net. Each fisher must have his or her own container; the first 25 lbs (11 kg) of fish captured may be retained. No angling license is required to harvest eulachon in Oregon. The WDFW currently allows harvest of eulachon by dip netting on the Cowlitz River, from 6 a.m. to 10 p.m. on Saturdays from January 1st–March 31st. The daily limit on the Cowlitz River is 10 lb (4.5 kg) per person per day. In Washington, the mainstem Columbia River is open for eulachon harvest 24 hours per day, 7 days per week during the eulachon run, and the daily limit is 25 lb (11 kg) per

person per day. Washington and Oregon developed a joint eulachon management plan in 2001 (WDFW and ODFW, 2001). The two states plan to continue authorizing eulachon sport fishing at various levels depending on predicted yearly eulachon abundance. Under the strictest proposed regulations, harvest would be limited to less than 10 percent of the run. If run sizes increase beyond current levels, the states would consider allowing additional harvest, but these more liberal harvest rates have not been specifically identified. In the State of California, the California Department of Fish and Game (CDFG) currently allows licensed recreational fishers to dipnet up to 25 lb (11 kg) of eulachon per day per person year-round (CDFG, 2008). However, in practice, little to no fishing is taking place because so few fish return each year. In 2008, the Canadian DFO did not authorize any recreational fishing for eulachon due to low abundance. In general, interest in recreational fishing for eulachon has decreased significantly due to the difficulty of harvesting these fish at their currently low abundance.

#### *Tribal Subsistence Fishing*

In the past, eulachon were an important food source for many Native American tribes and Canadian First Nations from northern California to Alaska. In more recent history, tribal members in the United States harvest eulachon under recreational fishing regulations. The Canadian DFO typically authorizes a small subsistence fishery for First Nation members, primarily in the Fraser River. Historically, members of the Yurok Tribe harvested eulachon in the Klamath River in California for subsistence purposes. The Yurok Tribe does not have a fishery management plan for eulachon at this time, and eulachon abundance levels on the Klamath are too low to support a fishery.

#### *Disease or Predation*

The BRT identified disease as a low risk to all four DPS populations of eulachon. Although Willson *et al.* (2006) identify common parasites of eulachon, the BRT did not present any information indicating that disease was a significant problem for this DPS.

Predation primarily from marine mammals, fishes, and birds was identified as a moderate threat to eulachon in the Fraser River and mainland British Columbia rivers and a low severity threat to eulachon in the Columbia and Klamath where there are fewer predators. Large numbers of predators commonly congregate at

eulachon spawning runs (Willson *et al.*, 2006). Eulachon rely on high abundance and synchronized spawn timing to ensure that adequate numbers of male and female fish escape predators and reproduce successfully. At low eulachon abundance, predation at historic levels may jeopardize population viability.

#### *The Inadequacy of Existing Regulatory Mechanisms*

##### **Bycatch**

The BRT identified bycatch of eulachon in commercial fisheries as a moderate threat to all four populations. In the past, protection of forage fishes has not been a priority when developing ways to reduce shrimp fishing bycatch. Eulachon are particularly vulnerable to capture in shrimp fisheries in the United States and Canada as the marine areas occupied by shrimp and eulachon often overlap. In Oregon, the bycatch of various species of smelt (including eulachon) has been as high as 28 percent of the total catch of shrimp by weight (Hannah and Jones, 2007). In Canada, bycatch of eulachon in shrimp fisheries has been significant enough to cause the Canadian Department of Fisheries and Oceans to close the fishery in some years (DFO, 2008).

In 2000, we declared canary rockfish overfished, as recommended by the Pacific Fisheries Management Council. In response, the states of Oregon, Washington, and California enacted regulations to reduce canary rockfish bycatch that require bycatch reduction devices (BRDs) on trawl gear used in the ocean shrimp fishery. The BRDs were successful in reducing bycatch of all finfish species (Hannah and Jones, 2007). In Oregon, these devices have been shown to reduce the smelt (including eulachon) bycatch to between 0.25 and 1.69 percent of the total catch weight (Hannah and Jones, 2007).

The DFO sets bycatch limits for the Canadian shrimp fishery and the shrimp trawl industry in Canada adopted 100 percent use of BRDs in 2000. The DFO will implement further management actions if estimated eulachon bycatch meets or exceeds the identified level. Management actions that may be taken include: closure of the shrimp trawl fishery, closure of certain areas to shrimp trawling, or restricting trawling to beam trawlers, which have been found to have a lower impact on eulachon than otter trawlers.

Little is known about the degree of injury and mortality eulachon experience as they pass through BRDs. Suuronen *et al.* (1996a; 1996b) found

that herring passing through mesh and rigid trawl net sorting devices (similar to BRDs) often die (mortality estimates ranging from 30–100 percent depending on herring size and season caught). Although eulachon bycatch rates in shrimp fisheries have declined significantly, it is not certain what percent of eulachon traveling through BRDs survive.

#### *Other Natural or Manmade Factors Affecting Its Continued Existence*

Natural events such as volcanic eruptions may cause significant local declines in eulachon abundance by causing catastrophic debris flows in rivers and drastically increasing fine sediments in benthic substrates. After the eruption of Mt. Helens in 1980, the Army Corps of Engineers constructed a sediment retention structure on the Toutle River. This structure was placed to prevent debris avalanches resulting from the eruption from moving downstream and causing navigation problems. Although the structure is designed to reduce the level of fine sediment traveling down the Toutle and into the Cowlitz River, there is some concern (as mentioned in the 2007 petition to list eulachon) that water released from the structure in the spring may contain high sediment levels that adversely affect eulachon spawning.

#### **Efforts Being Made to Protect Southern DPS Eulachon**

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to take into account efforts being made to protect a species that has been petitioned for listing. Accordingly, we assessed conservation measures being taken to protect eulachon to determine whether they ameliorate this species' extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts that have yet to be implemented or to show effectiveness, we consider the following: the substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented; the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions that track the effectiveness of recovery efforts, and that inform iterative refinements to management as information is accrued (68 FR 15100; March 28, 2003).

Although no efforts specific to eulachon are currently being made to protect freshwater habitat in the United States, this species indirectly benefits from several Federal, state, and tribal regulatory and voluntary aquatic habitat improvement programs aimed at other

species. Based on the available information on eulachon biology, the physical habitat features most likely to be important to eulachon reproduction in fresh water are water quantity, water quality (especially temperature), free passage, and substrate condition. Federal programs carried out under legislation such as the Federal Clean Water Act (CWA) of 1972 help to ensure that water quality is maintained or improved and that discharge of fill material into rivers and streams is regulated. Several sections of this law, such as section 404 (discharge of fill into wetlands), section 402 (discharge of pollutants into water bodies), and section 404(d) (designation of water quality limited streams and rivers) regulate activities that might degrade eulachon habitat. Although programs carried out under the CWA are well funded and enforcement of this law occurs, it is unlikely that programs are sufficient to fully protect eulachon habitat. Despite the existence and enforcement of this law, a significant percent of stream reaches in the range of Pacific eulachon do not meet current water quality standards.

Section 10 of the Rivers and Harbors Act prohibits placement of any structure in any navigable waterway of the United States without approval from the Army Corps of Engineers. Most or all freshwater eulachon habitat in the United States is considered to be navigable, and it is not expected that any additional major obstructions (i.e., dams) to eulachon migration would be authorized within their range in this area. Smaller structures such as weirs and fish traps intended for fishery management may be placed in some tributaries of the Columbia River (see: <http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/Hatcheries/Mitchell-Act-EIS.cfm> and NMFS, 2004; for more information).

In Canada, dredging is not allowed in the Fraser River during early March to June to protect spawning eulachon. We are not aware of any other specific measures taken to protect eulachon freshwater habitat in Canada.

State regulatory programs that protect eulachon habitat include wetland/waterway fill-removal programs such as those administered by the Oregon Department of State Lands and the Washington Department of Ecology. Similar to the Federal CWA, these programs regulate filling of wetlands and discharge of fill material that might adversely affect eulachon spawning habitats. In addition, the State of California protects water quality and associated beneficial uses through administration of the Porter-Cologne

Act, (similar to the Federal CWA), and implementation of CDFG 1602 regulations. In general, the described regulatory programs within these three states are aimed at protecting the important functions of riverine and wetland ecology, such as maintaining a properly functioning riparian plant community, storing groundwater, and preserving floodplain roughness. They are also aimed at reducing the discharge of fine sediments that might alter or degrade eulachon spawning substrates. It is thus reasonable to conclude that these laws will provide some protection to eulachon habitat.

The range of eulachon in the Pacific Northwest and California largely or completely overlaps with the range of several ESA-listed stocks of salmon and steelhead and green sturgeon. Although the habitat requirements of these fishes differ somewhat from eulachon, habitat protection generally focuses on the maintenance of aquatic habitat forming processes expected to benefit eulachon. In particular, the numerous ESA section 7 consultations carried out on Federal activities throughout the range of eulachon provide a level of habitat protection. The protective efforts for salmon and steelhead are described in detail in our proposed listing determinations for 27 species of West Coast salmon and steelhead (69 FR 33102; June 14, 2004). Efforts to protect green sturgeon are described in our proposed listing determination for this species (70 FR 17386; April 6, 2005).

The development and operation of the Federal Columbia River Power System (FCRPS) and Bureau of Reclamation irrigation projects in the Columbia River basin have altered the hydrology of this river system. We have worked with the Army Corps of Engineers, Bonneville Power Administration, and Bureau of Reclamation to develop mitigation measures to minimize the adverse effects of these projects on ESA-listed salmon and steelhead. On May 5, 2008, we issued final biological opinions on the operation of the FCRPS and Upper Snake River Irrigation Projects. The planned mitigation measures, including additional spring water spill and predator control programs, will benefit eulachon as well. Since eulachon are known to be plentiful in systems with a strong spring freshet, spilling additional water in the spring to increase survival of juvenile salmon and steelhead is likely to move the hydrograph of the Columbia River to a state more similar to that under which eulachon evolved. The Northern Pikeminnow Sport Reward Fishery should reduce predation levels in the

Columbia River on all small fishes, including eulachon.

Throughout the eulachon's range in Oregon, Washington, and California, an array of Federal, state, tribal, and local entities carry out aquatic habitat restoration programs. These programs are generally intended to benefit other fish species such as salmon, steelhead, trout, etc. Eulachon also benefit from improvements in water quality and physical habitat attributes resulting from these projects. Although these programs are too numerous to list individually, some of the larger programs include the Bonneville Power Administration's Columbia Basin Fish and Wildlife Program, the Pacific Coast Salmon Recovery Fund, the Lower Columbia Fish Recovery Board, and the Oregon Watershed Enhancement Board. The Federal land managers, U.S. Forest Service, Bureau of Land Management, and National Park Service also carry out aquatic restoration projects in some watersheds where eulachon migrate and spawn. These agencies have been conducting restoration projects in these areas for many years and projects located in the lower reaches of rivers (where eulachon spawn) are likely to provide some benefit to eulachon habitat.

Marine waters of the United States are managed by state and Federal Governments. At this time, we do not know enough about eulachon use of near shore ocean habitats to determine the degree to which existing marine habitat management benefits eulachon.

### Proposed Determination

Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the petition, the report of the BRT (Gustafson *et al.*, 2008), co-manager comments, and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with eulachon.

Based on this review, we conclude that eulachon populations spawning from the Skeena River in British Columbia south to the Mad River in Northern California meet the discreteness and significance criteria for a DPS (Gustafson *et al.*, 2008). Eulachon occurring in this area are discrete from eulachon occurring north of this area based on differences in spawning temperatures; length- and weight-at-

maturity in the species' range; ecological features of both the oceanic and freshwater environments occupied by eulachon; and genetic characteristics. This group of fish is significant to the species as a whole because it constitutes over half of the geographic range of the entire species' distribution and includes two of the known major production areas (Columbia and Fraser rivers) and a third area that may have been historically a major production area (Klamath River). Although eulachon are currently rarely seen in the Klamath River, sampling in 2007 confirmed they are still present there in small numbers. The loss of this group of fish would create a significant reduction in the species' overall distribution.

Ongoing efforts to protect Pacific salmonids, as described in the previous section, are likely to also benefit Pacific eulachon habitat. Taken together, however, these efforts do not comprehensively address the threats to eulachon from climate change and bycatch in the shrimp fishery.

Based on the best scientific and commercial information available, including the draft BRT report, we propose that the southern DPS of eulachon is not presently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Factors supporting a conclusion that the DPS is not presently in danger of extinction include: (1) two core spawning areas have sufficient numbers of eulachon to maintain spawning, at least at low levels; (2) as observed in the past (2001–2003), a reversion to favorable environmental ocean conditions could result in a rebound in abundance; and (3) the species likely strays at a moderate-to-high rate, so that in the presence of favorable environmental conditions rebuilding of depressed populations may occur.

Factors supporting a conclusion that the DPS is likely to become in danger of extinction in the foreseeable future include: (1) abundance in all surveyed populations, and in the two remaining core populations, is low and declining; and (2) the available information suggests that eulachon in Northern California experienced an abrupt decline several decades ago, and although still present at very low numbers, it is unknown if these represent a viable self-sustaining population, and (3) eulachon require minimum population sizes to achieve successful reproduction.

In sum, future declines in population abundance may occur as a result of climate change and continued bycatch in the shrimp fishery. These threats

indicate that the southern DPS of eulachon is likely to become endangered in the foreseeable future. Therefore, NMFS proposes to list the southern DPS of eulachon as threatened.

### Take Prohibitions and Protective Regulations

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. In the case of threatened species, ESA section 4(d) requires the Secretary of Commerce to issue regulations necessary and appropriate for the conservation of the species. We have flexibility under section 4(d) to tailor protective regulations based on the needs of, and threats to, the species. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. We will evaluate protective regulations pursuant to section 4(d) for the southern DPS of eulachon and propose any considered necessary and advisable for conservation of the species in future rulemaking. In order to inform our consideration of appropriate protective regulations for southern DPS eulachon, we seek information from the public on the threats to this species and possible measures for its conservation.

### Other Protections

Section 7(a)(2) of the ESA and NMFS/FWS regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or that result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, Federal agencies must consult on any action they authorize, fund, or carry out if those actions may affect the listed species or its critical habitat. Examples of Federal actions that may affect the southern DPS of eulachon include: water diversions, hydropower operations, discharge of pollution from point sources, non-point source pollution, contaminated waste disposal, dredging, water quality standards, fishery management practices, and a variety of land management practices such as development, logging, and transportation management.

### Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer

review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106-554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we are obtaining independent peer review of the draft status review report, which supports this proposal to list the southern DPS of eulachon as threatened; all peer reviewer comments will be addressed prior to dissemination of the final report and publication of the final rule.

### Critical Habitat

Critical habitat is defined in section 3 of the ESA as: "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (16 U.S.C. 1532(3)). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species (16 U.S.C. 1533(a)(3)(A)(i)). Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

We are currently compiling information to prepare a critical habitat proposal for the southern DPS of eulachon, and in this document are seeking public input and information to assist in gathering and analyzing the best available scientific data to support a critical habitat designation. We will continue to meet with co-managers and other stakeholders to review this information and the overall designation process. We will then initiate rulemaking with the publication of a proposed designation of critical habitat in the **Federal Register**, opening a period for public comment and the opportunity for public hearings.

Joint NMFS/FWS regulations for listing endangered and threatened species and designating critical habitat at 50 CFR 424.12(2)(b) state that the agency "shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection." Pursuant to the regulations, such requirements include, but are not limited to the following: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The regulations also state that the agency shall focus on the principal biological or physical constituent elements within the specific areas considered for designation. These primary constituent elements may include, but are not limited to: spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, geological formation, vegetation type, tide, and specific soil types.

In accordance with the Secretarial Order on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, we will coordinate with federally recognized American Indian Tribes on a Government-to-Government basis to determine how to make critical habitat assessments in areas that may impact Tribal trust resources. In accordance with our regulations at 50 CFR 424.13, we will consult as appropriate with affected states, interested persons and organizations, other affected Federal agencies, and, in cooperation with the Secretary of State, with the country or countries in which the species concerned are normally found or whose



citizens harvest such species from the high seas.

### Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, we solicit comments and suggestions from the public, other governmental agencies, the Government of Canada, the scientific community, industry, environmental groups, and any other interested parties. Comments are encouraged on this proposal (See **DATES** and **ADDRESSES**). Specifically, we are interested in information regarding: (1) eulachon spawning habitat within the range of the southern DPS that was present in the past, but may have been lost over time; (2) biological or other relevant data concerning any threats to the southern DPS of eulachon; (3) the range, distribution, and abundance of the southern DPS of eulachon; (4) current or planned activities within the range of the southern DPS of eulachon and their possible impact on this DPS; (5) recent observations or sampling of eulachon in Northern California rivers including but not limited to the Klamath River, Mad River, and Redwood Creek; and (6) efforts being made to protect the southern DPS of eulachon.

### Critical Habitat

We also request quantitative evaluations describing the quality and extent of freshwater and marine habitats for juvenile and adult eulachon as well as information on areas that may qualify as critical habitat for the proposed southern DPS. Specific areas that include the physical and biological features essential to the conservation of the DPS, where such features may require special management considerations or protection, should be identified. We also solicit biological and economic information relevant to making a critical habitat designation for the southern DPS of eulachon. Although the range of this DPS extends into Canada, ESA implementing regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside of United States jurisdiction. Therefore, we request information only on potential areas of critical habitat within the United States or waters within U.S. jurisdiction.

Section 4(b)(2) of the ESA requires the Secretary to consider the "economic impact, impact on national security, and any other relevant impact," of designating a particular area as critical habitat. For this, section 4(b)(2) authorizes the Secretary to exclude from a critical habitat designation those

particular areas where the Secretary finds that the benefits of exclusion outweigh the benefits of designation, unless excluding that area will result in extinction of the species. We seek information regarding the conservation benefits of designating areas in the Columbia River and its tributaries, the Klamath River, other coastal rivers in Washington, Oregon and California, and marine areas, as critical habitat. We also seek information on the economic benefit of excluding areas from the critical habitat designation, and the economic benefits of including an area as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000; 2003), we seek information that would allow us to monetize these effects to the extent possible, as well as information on qualitative impacts to economic values. We also seek information on impacts to national security and any other relevant impacts of designating critical habitat in these areas.

Data reviewed may include, but are not limited to: (1) scientific or commercial publications, (2) administrative reports, maps or other graphic materials, information received from experts, and (3) comments from interested parties. Comments and data particularly are sought concerning: (1) maps and specific information describing the amount, distribution, and use type (e.g., spawning, rearing, or migration) of eulachon habitat (both freshwater and marine), as well as any additional information on occupied and unoccupied habitat areas; (2) the reasons why any habitat should or should not be determined to be critical habitat as provided by sections 3(5)(A) and 4(b)(2) of the ESA; (3) information regarding the benefits of designating particular areas as critical habitat; (4) current or planned activities in the areas that might be proposed for designation and their possible impacts; (5) any foreseeable economic or other potential impacts resulting from designation, and in particular, any impacts on small entities; (6) whether specific unoccupied areas (e.g., areas where eulachon have been extirpated) may be essential to provide additional habitat areas for the conservation of this DPS; and (7) potential peer reviewers for a proposed critical habitat designation, including persons with biological and economic expertise relevant to the species, region, and designation of critical habitat. We seek information regarding critical habitat for the southern DPS of eulachon as soon as

possible, but by no later than May 12, 2009.

### References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

### Classification

#### *National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216-6).

#### *Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

#### *Federalism*

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the species is believed to occur, and those states will be invited to comment on this proposal. We have conferred with the states of Washington, Oregon, and California in the course of assessing the status of the southern DPS of eulachon, and considered, among other things, Federal, state and local conservation measures. As we proceed, we intend to continue engaging in informal and formal contacts with the states, and other affected local or regional entities, giving careful consideration to all written and oral comments received.

#### **List of Subjects in 50 CFR Part 223**

Endangered and threatened species, Exports, Imports, Transportation.



Dated: March 6, 2009.  
**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

For the reasons set out in the  
preamble, 50 CFR part 223 is proposed  
to be amended as follows:

**PART 223—THREATENED MARINE  
AND ANADROMOUS SPECIES**

1. The authority citation for part 223  
continues to read as follows:

**Authority:** 16 U.S.C. 1531 1543; subpart B,  
§ 223.201–202 also issued under 16 U.S.C.  
1361 *et seq.*; 16 U.S.C. 5503(d) for  
§ 223.206(d)(9) *et seq.*

2. In § 223.102, paragraph (c) is  
revised by adding and reserving  
paragraphs (c)(25) and (c)(26) and  
adding a new paragraph (c)(27) to read  
as follows:

**§ 223.102 Enumeration of threatened  
marine and anadromous species.**  
(c) \* \* \*

Species <sup>1</sup>		Where Listed	Citation(s) for listing determina- tion(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
* * (27) eulachon - southern DPS	* <i>Thaleichthys pacificus</i>	* California, Oregon, Washington, and British Columbia.	* [INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE]	* * [INSERT FR CITATION & DATE WHEN PUBLISHED AS A FINAL RULE]

# Notices

Federal Register

Vol. 74, No. 48

Friday, March 13, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested; Republication

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Submit comments on or before May 12, 2009.

**ADDRESSES:** Send comments via e-mail at [mgushue@usaid.gov](mailto:mgushue@usaid.gov) or mail comments to: Michael Gushue, Contract Specialist, Office of Acquisition and Assistance, Policy Division, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 (202) 712-5831.

**FOR FURTHER INFORMATION CONTACT:** Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania

Avenue, NW., Washington, DC 20523, (202) 712-1365 or via e-mail [bjohnson@usaid.gov](mailto:bjohnson@usaid.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB No.:* 0412-0570.

*Form No.:* N/A.

*Title:* USAID 22 CFR 226.91, Marking Requirements, "Branding Strategy" and "Marking Plan".

*Type of Review:* Renewal of information collection.

*Purpose:* The information collection consists of the requirement for Apparent Successful Applicants to submit a Branding Strategy and Marking Plan as defined in the Final Rule (70 FR 50188, August 26, 2005). The information collected will be the Apparent Successful Applicant's proposal on how to brand and mark with the USAID Identity, The USAID funded program, project, activity, public communication or commodity. Respondents will consist of only those applicants for USAID funding who have been requested to submit a Branding Strategy and Marking Plan by the Agreement Officer.

#### Annual Reporting Burden

*Respondents:* 500.

*Total Annual Responses:* 500.

*Total Annual Hours Requested:* 1,750 hours.

Dated: March 3, 2009.

**Sylvia Lankford,**

*Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.*

[FR Doc. E9-5143 Filed 3-12-09; 8:45 am]

**BILLING CODE 6116-01-M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. AMS-TM-08-0112; TM-08-14]

#### Notice of Funds Availability (NOFA) Inviting Applications for the 2009 Farmers' Market Promotion Program (FMPP)

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) announces funding of approximately \$5 million in competitive grant funds for fiscal year (FY) 2009 to increase domestic consumption of agricultural commodities by expanding

direct producer-to-consumer market opportunities. Examples of direct producer-to-consumer market opportunities include new farmers' markets, roadside stands, community supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer infrastructures. AMS hereby requests proposals from eligible entities from the following categories: (1) An agricultural cooperative or a producer network or association, (2) local governments, (3) nonprofit corporations, (4) public benefit corporations, (5) economic development corporations, (6) regional farmers' market authorities, and (7) Tribal governments. The maximum award per grant is \$100,000. No matching funds are required. AMS strongly recommends that each applicant visit the AMS Web site at <http://www.ams.usda.gov/FMPP> to review a copy of the FMPP Guidelines and application package preparation information to assist in preparing the proposal narrative and application. In accordance with the Paperwork Reduction Act of 1995, the information collection requirements have been previously approved by the Office of Budget and Management (OMB) under 0581-0235.

**DATES:** Applications should be received at the address below and must be postmarked not later than April 27, 2009. Applications bearing a postmark after the deadline will not be considered.

**ADDRESSES:** Submit proposals and other required materials to Mr. Errol Bragg, Director, Marketing Services Division, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646-South, 1400 Independence Avenue, SW., Washington, DC 20250-0269, phone 202/720-8317.

For hard-copy (paper) submissions, all forms, narrative, letters of support, and other required materials must be forwarded in one application package. AMS will not accept application packages by e-mail; electronic applications will be accepted only if submitted via <http://www.Grants.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmen Humphrey, Branch Chief, Marketing Grants and Technical Assistance Branch, Marketing Services Division, Transportation and Marketing Programs, AMS, USDA, on 202-720-

8317, fax 202-690-0031, or by e-mail [USDAFMPP@usda.gov](mailto:USDAFMPP@usda.gov). State that your request for information refers to Docket No. TM-08-14.

**SUPPLEMENTARY INFORMATION:** This solicitation is issued pursuant to Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001-3006) as amended by Section 10605 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (the Acts) authorizing the establishment of the Farmers' Market Promotion Program (7 U.S.C. 3005) (FMPP). The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) also made a number of changes to the FMPP and provided the available funding. The amended act states that the purposes of the FMPP are "(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of, domestic farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of, new farmers' markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities."

Detailed program guidelines may be obtained at <http://www.ams.usda.gov/FMPP> or from the contact listed above. In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to engage in further public participation under 5 U.S.C 553 because the applications for the FMPP need to be made available as soon as possible as the program season approaches.

### Background

AMS will grant awards for projects that continue developing, promoting, and expanding direct marketing of agricultural commodities from farmers to consumers. Eligible FMPP proposals should support marketing entities where agricultural farmers or vendors sell their own products directly to consumers, and the sales of these farm products should represent the core business of the entity.

All eligible entities shall be domestic entities, *i.e.*, those owned, operated, and located within one or more of the 50 United States and the District of Columbia only. Entities located within U.S. territories are not eligible.

Additionally, under this program eligible entities must apply for FMPP

funds on behalf of direct marketing operators that include two or more agricultural farmers/vendors that produce and sell their own products through a common distribution channel. For example, a sole proprietor of a roadside farm market would not be eligible for this program. Individual agricultural producers, including farmers and farmers' market vendors, roadside stand operators, community-supported agriculture participants, and other individual direct marketers are not eligible for FMPP funds.

All electronic benefits transfers (EBT) will be considered for FMPP funding. Not less than 10 percent of the total available funds will be used to support the use of electronic benefits transfers (EBT) for Federal nutrition programs at farmers' markets. Additionally, these new EBT projects must demonstrate a plan to continue to provide EBT card access at one (1) or more farmers' markets following the receipt of the FMPP grant. To be included in this allotment of funds the application narrative must designate the applicant's competition for FMPP as a new EBT project. See the FMPP Guidelines at <http://www.ams.usda.gov/FMPP> for more information.

FMPP funds exclude existing routine operational expenses such as management salaries or other salaries associated with normal operation of existing farmers markets/marketing entities, utility bills, and insurance premiums. In addition, funds shall be provided to eligible entities that demonstrate a plan to continue to provide EBT card access at one (1) or more farmers' markets following the receipt of the grant.

FMPP grant funds must be applied to the specific programs and objectives identified in the application. Proprietary projects and projects that benefit one agricultural producer or individual will not be considered.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the FMPP information collection is currently approved by OMB and were assigned OMB control number 0581-0235.

AMS is committed to complying with the e-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### How to Submit Proposals and Applications

Each applicant must follow the application preparation and submission instructions provided within the FMPP Guidelines at <http://www.ams.usda.gov/FMPP>. Electronic forms, proposals, letters of support, or any other application materials e-mailed directly to AMS-FMPP or USDA-AMS staff will not be accepted.

Following are the options available for submitting proposals and applications to AMS:

**Paper Submissions**—For paper submissions, an original and one copy of the proposal, required forms, narrative, letters of support, and all required materials must be submitted in one package, preferably via express mail.

**Electronic Submissions via Grants.gov**—Applicants may apply electronically for grants through Grants.gov at <http://www.Grants.gov> (insert 10.168 in grant search) and are strongly encouraged to initiate the electronic submission process at least two weeks prior to application deadline. Grants.gov applicants who submit their FMPP proposals via the Federal grants Web site are not required to submit any paper documents to FMPP.

FMPP is listed in the "Catalog of Federal Domestic Assistance" under number 10.168 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Dated: March 10, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9-5491 Filed 3-12-09; 8:45 am]

**BILLING CODE 3410-02-P**

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

[Doc. No. AMS-TM-09-0004; TM-09-01]

#### Nominations for Members of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Allowed and Prohibited Substances. The NOSB also

advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The positions to be filled are: organic producer (2 positions), retailer (1 position), organic handler (1 position), and an environmentalist (1 position). The Secretary of Agriculture will appoint a person to each position to serve a 5-year term of office that will commence on January 24, 2010, and run until January 24, 2015. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

**DATES:** Written nominations, with cover letters and resumes, must be postmarked on or before July 17, 2009.

**ADDRESSES:** Nomination cover letters and resumes should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA-AMS-TMP-NOP, 1400 Independence Avenue, SW., Room 4004-So., Ag Stop 0268, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Ms. Katherine E. Benham, (202) 205-7806; *E-mail:* [katherine.benham@usda.gov](mailto:katherine.benham@usda.gov); *Fax:* (202) 205-7808.

**SUPPLEMENTARY INFORMATION:** The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish a NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The NOSB made recommendations to the Secretary regarding establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer (2 positions), retailer (1 position), organic handler (1 position), and an environmentalist (1 position). Individuals desiring to be appointed to

the NOSB at this time must be either an owner or operator of an organic production operation, an owner or operator of an organic handling operation, an owner or operator of a retail establishment with significant trade in organic products, or an individual with expertise in areas of environmental protection and resource conservation. Selection criteria will include such factors as: demonstrated experience and interest in organic production, handling and retailing; diverse commodity and geographic representation; support of consumer and public interest organizations; demonstrated experience with environmental matters; and such other factors as may be appropriate for specific positions.

To nominate yourself or someone else please submit, at a minimum, a cover letter stating your interest and a copy of the nominee's resume. You may also submit a list of endorsements or letters of recommendation, if desired.

Nominees will be supplied with an AD-755 background information form that must be completed and returned to USDA within 10 working days of its receipt. Resumes and completed background information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505-0001.

Dated: March 9, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9-5415 Filed 3-12-09; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. FSIS-2009-0004]

#### Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labeling

**AGENCY:** Office of the Acting Deputy Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Acting Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on April 7, 2009. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 37th Session of the Codex Committee on Food Labeling (CCFL) of the Codex Alimentarius Commission (Codex), which will be held in Calgary, Canada, on May 4 to May 8, 2009. In addition, a Working Group on the Implementation of the World Health Organization (WHO) Global Strategy on Diet, Physical Activity, and Health will meet on May 2, 2009. The Acting Deputy Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 37th Session of the CCFL and to address items on the agenda.

**DATES:** The public meeting is scheduled for Tuesday, April 7, 2009, from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in Room 107A, Jamie Whitten Federal Building, 1200 Independence Ave., SW., Washington, DC 20250. Codex documents related to the 37th Session of the CCFL will be accessible via the World Wide Web at the following address: <http://www.codexalimentarius.net/current.asp>.

The U.S. Delegate to the CCFL, Dr. Barbara Schneeman, invites U.S. interested parties to submit their comments electronically to the following e-mail address: [ccfl@fda.hhs.gov](mailto:ccfl@fda.hhs.gov).

**FOR FURTHER INFORMATION ABOUT THE 37TH SESSION OF THE CCFL CONTACT:** Dr. Michael Wehr, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740. *Phone:* (301) 436-1724, *Fax:*

(301) 436-2618, *e-mail*:  
*michael.wehr@fda.hhs.gov*

**FOR FURTHER INFORMATION ABOUT THE**

**PUBLIC MEETING CONTACT:** Paulo Almeida, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Ave., SW., Washington, DC 20250. Phone (202) 205-7760, *Fax*: (202) 720-3157.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the WHO. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFL drafts provisions on labeling applicable to all foods; considers, amends if necessary, and endorses specific provisions on labeling of draft standards, codes of practice, and guidelines prepared by other Codex committees; studies specific labeling problems assigned to it by the Commission; and studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions. The Committee is chaired by Canada.

*Issues To Be Discussed at the Public Meeting*

The following items on the agenda for the 37th Session of the CCFL will be discussed during the public meeting:

- Matters Referred to the Committee from other Codex bodies;
- Consideration of Labeling Provisions in Draft Codex Standards;
- Implementation of the WHO Global Strategy on Diet, Physical Activity, and Health: (a) Proposed Draft Revision of the Guidelines on Nutrition Labeling Concerning the List of Nutrients that are Always Declared on a Voluntary or Mandatory Basis; (b) Discussion Paper on Issues Related to Mandatory Nutrition Labeling; (c) Proposed Draft Criteria and Principles for Legibility and Readability of Nutrition Labels; (d) Discussion Paper on Labeling Provisions Dealing with the Food Ingredients Identified in the Global Strategy on Diet, Physical Activity, and Health;
- Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods: Annex 1: Inclusion of Ethylene for Other Products; (b) Deletion of Rotenone from Annex 2;

- Labeling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification and Genetic Engineering; (a) Draft Amendment to the General Standard for the Labeling of Prepackaged Foods: Definitions; (b) Proposed Draft Recommendations for the Labeling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification and Genetic Engineering;
- Editorial Amendments to Codex Texts on Food Labeling;
- Discussion Paper on the Need to Amend the General Standard for the Labeling of Prepackaged Foods in Line with the International Organization of Legal Metrology (OIML) Recommendations Regarding the Declaration of the Quantity of Product in Prepackages; and,
- Discussion Paper on Modified Standardized Common Names Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

*Public Meeting*

At the April 7, 2009, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate to the CCFL, Dr. Barbara Schneeman (see **ADDRESSES**). Written comments should state that they relate to activities of the 37th Session of the CCFL.

*Additional Public Notification*

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at [http://www.fsis.usda.gov/regulations/2009\\_Notices\\_Index/](http://www.fsis.usda.gov/regulations/2009_Notices_Index/). FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page.

Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/news\\_and\\_events/email\\_subscription/](http://www.fsis.usda.gov/news_and_events/email_subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: March 9, 2009.

**Barbara McNiff,**

*Acting U.S. Manager for Codex Alimentarius.*

[FR Doc. E9-5449 Filed 3-12-09; 8:45 am]

**BILLING CODE 3410-DM-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Lake Tahoe Basin Federal Advisory Committee**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee (LTFAC) will hold a meeting on March 23, 2009 on the north shore of Lake Tahoe. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held March 23, 2009 beginning at 1 p.m. and ending at 5 p.m.

**ADDRESSES:** The meeting will be held on the north shore of Lake Tahoe. A final location can be confirmed at <http://www.fs.fed.us/r5lltbtmullocal/ltfac>.

**FOR FURTHER INFORMATION CONTACT:** Arla Hains, Lake Tahoe Basin Management Unit (LTBMU), Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2773.

**SUPPLEMENTARY INFORMATION:** Items to be covered on the agenda include:

- The Tahoe Working Group (TWG) will present their Lake Tahoe Southern Nevada Public Land Management Act (SNPLMA) Round 10 preliminary recommendation for capital projects and science themes. The LTFAC will discuss and with possible consensus, put

forward a preliminary recommendation for public comment.

- **Public Comment.**

Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements for the Committee before or after the meeting. Please refer any written comments attention Arla Hains, Lake Tahoe Basin Management Unit at the contact address stated above.

If you have questions concerning special needs for this public meeting, or to request sign language interpretation, contact Linda Lind at (530)543-2787 or TTY (530)543-0956, or via e-mail at [LLind@fs.fed.us](mailto:LLind@fs.fed.us).

This **Federal Register** notice will be published less than 15 calendar days prior to the meeting. There will be timely meeting notification through the LTBMU Web site (<http://www.fs.fed.us/r5/ltbmullocal/ltfac>).

Dated: March 5, 2009.

Eli Ilano,

*Deputy Forest Supervisor.*

[FR Doc. E9-5142 Filed 3-12-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Tri-County Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tri-County Resource Advisory Committee (RAC) will meet on Thursday, March 26, 2009, from 5 p.m. until 8 p.m., in Deer Lodge, Montana. The purpose of the meeting is to conduct "welcomes" and introductions, review Federal Advisory Committee Act requirements, brief participants on Payments to States legislative history, discuss the guidelines for Title II and Title III funding and proposals, capture and record preliminary project ideas, and receive public comment on the meeting subjects and proceedings.

**DATES:** Thursday, March 26, 2009, from 5 p.m. until 8 p.m.

**ADDRESSES:** The meeting will be held at the USDA building located 1002 Hollenback Road, Deer Lodge, Montana (MT 59722).

**FOR FURTHER INFORMATION CONTACT:** Sonja Shadow, Committee Coordinator, Beaverhead-Deerlodge National Forest, 420 Barrett Road, Dillon, MT 59725; (406) 683-3984; e-mail [sshadow@fs.fed.us](mailto:sshadow@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Agenda items to be covered include: (1)

Welcome and Committee introductions; (2) Federal Advisory Committee Act overview; (3) review of Payments to States legislative history and discussion of requirements related to Title II and Title III funding; (4) discussion of Committee member roles and operational guidelines; (5) discussion of preliminary project ideas; (6) review of next meeting purpose, location, and date; (7) and receive public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 4, 2009.

**Bruce Ramsey,**

*Designated Federal Official.*

[FR Doc. E9-5161 Filed 3-9-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Trinity County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Trinity County Resource Advisory Committee (RAC) will meet at the Trinity County Office of Education in Weaverville, California, April 6, 2009, beginning at 6:30 p.m. The purpose of this meeting is to discuss proposed projects of the Secure Rural Schools and Community Self-Determination Act of 2000.

**DATES:** Monday, April 6, 2009.

**ADDRESSES:** Trinity County Office of Education, 201 Memorial Drive, Weaverville, California 96093.

**FOR FURTHER INFORMATION CONTACT:** Resource Advisory Committee Coordinator John Heibel at (530) 226-2524 or [jheibel@fs.fed.us](mailto:jheibel@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Trinity County Resource Advisory Committee.

Dated: March 5, 2009.

**Scott G. Armentrout,**

*Deputy Forest Supervisor, Shasta-Trinity National Forest.*

[FR Doc. E9-5350 Filed 3-12-09; 8:45 am]

**BILLING CODE 3410-11-M**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** comments must be received before 4/13/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and

services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Products

NSN: 6532-00-NIB-0018—Pajama Top, Men's, Small, Khaki.  
 NSN: 6532-00-NIB-0019—Pajama Top, Men's, Medium, Brown.  
 NSN: 6532-00-NIB-0020—Pajama Top, Men's, Large, Cranberry.  
 NSN: 6532-00-NIB-0021—Pajama Top, Men's, X-Large, Beige.  
 NSN: 6532-00-NIB-0022—Pajama Top, Men's, 2X-Large, Hunter Green.  
 NSN: 6532-00-NIB-0023—Pajama Top, Men's, 3X-Large, Navy Blue.  
 NSN: 6532-00-NIB-0024—Pajama Top, Men's, 4X-Large, Gray.  
 NSN: 6532-00-NIB-0025—Pajama Top, Men's, 5X-Large, Green.  
 NSN: 6532-00-NIB-0026—Pajama Pants, Men's, Small, Khaki.  
 NSN: 6532-00-NIB-0027—Pajama Pants, Men's, Medium, Brown.  
 NSN: 6532-00-NIB-0028—Pajama Pants, Men's, Large, Cranberry.  
 NSN: 6532-00-NIB-0029—Pajama Pants, Men's, X-Large Beige.  
 NSN: 6532-00-NIB-0030—Pajama Pants, Men's, 2X-Large, Hunter Green.  
 NSN: 6532-00-NIB-0031—Pajama Pants, Men's, 3X-Large, Navy Blue.  
 NSN: 6532-00-NIB-0032—Pajama Pants, Men's, 4X-Large, Gray.  
 NSN: 6532-00-NIB-0033—Pajama Pants, Men's, 5X-Large, Green.  
 NSN: 6532-00-NIB-0034—Pajamas, Men's, Komograph Stamped.  
 NPA: Central Association for the Blind & Visually Impaired, Utica, NY.  
*Contracting Activity:* Veterans Affairs, Department of, Dept of Veterans Affairs, Hines, IL.  
*Coverage:* C-list for 100% of the requirement for the Department of Veterans Affairs.

#### Services

*Service Type/Location:* Custodial Services, Fort Custer Education Center, 2501 26th Street, Augusta, MI.  
 NPA: Navigations, Inc., Battle Creek, MI.  
*Contracting Activity:* Dept of the Army, XRAW8AC MIARNG Element, JF HQ, Lansing, MI.  
*Service Type/Location:* BSC-USCG Seattle, WA, U.S. Coast Guard, Seattle, WA, U.S. Coast Guard Integrated Support Command, Seattle, WA.  
 NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.  
*Contracting Activity:* U.S. Coast Guard, Department of Homeland Security,

Seattle, WA.

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. E9-5469 Filed 3-12-09; 8:45 am]

**BILLING CODE 6353-01-P**

#### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Addition and deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to and deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

**DATES:** *Effective Date:* 4/13/2009.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

#### SUPPLEMENTARY INFORMATION:

#### Additions

On 1/16/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR No. 11, page 2994) of proposed addition to the Procurement List.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following service is added to the Procurement List:

#### Services

*Service Type/Location:* Custodial service, Southside Locust Pt, Baltimore, MD—CBP, 2001 East McComas St., Baltimore, MD.

NPA: The Arc of Baltimore, Inc., Baltimore, MD.

*Contracting Activity:* Bureau of Customs and Border Protection, Office of Procurement.

#### Deletions

On 11/21/2008, 1/5/2009 and 1/16/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (73 FR No. 226, page 70617, 74 FR No. 2, page 261 and 74 FR No. 11, page 2994) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products deleted from the Procurement List.

#### End of Certification

Accordingly, the following products are deleted from the Procurement List:

#### Products

NSN: 7520-01-466-0484—Tray, Desk, Plastic.

NPA: L.C. Industries for the Blind, Inc., Durham, NC.

*Contracting Activity:* GSA/FSS Ofc Sup Ctr—Paper Products, New York, NY.

NSN: 6230-01-513-3266—Flashlight, Aluminum, 2D, Silver.

NPA: Central Association for the Blind & Visually Impaired, Utica, NY.

*Contracting Activity:* GSA/FSS Ofc Sup Ctr—Paper Products, New York, NY.

NSN: 7045-01-461-0589—Data Cartridge, Travan.

NSN: 7045-01-459-8643—Data Cartridge, Travan.  
 NPA: North Central Sight Services, Inc., Williamsport, PA.  
 Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

**Barry S. Lineback,**  
 Director, Business Operations.  
 [FR Doc. E9-5470 Filed 3-12-09; 8:45 am]  
**BILLING CODE 6353-01-P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

Friday, March 20, 2009, 9:30 a.m.  
 U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

### Briefing Agenda

*Topic:* An Examination of Civil Rights Issues with Respect to the Mortgage Crisis.

- I. Introductory Remarks by Chairman
- II. Speakers' Presentations.
- III. Questions by Commissioners and Staff Director.
- IV. Adjourn Briefing.

**FOR FURTHER INFORMATION CONTACT:**  
 Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8582. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202-376-8105. TDD: (202) 376-8116.

Dated: March 10, 2009.

**David Blackwood,**  
 General Counsel.  
 [FR Doc. E9-5510 Filed 3-10-09; 4:15 pm]  
**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Minority Business Development Agency (MBDA).

*Title:* National Minority Enterprise Development (MED) Week Awards Program Application Requirements.

*OMB Control Number:* None (new collection).

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Number of Respondents:* 100.

*Average Hours per Response:* 2.

*Burden Hours:* 200.

*Needs and Uses:* One of MBDA's largest initiatives is the annual National Minority Enterprise Development (MED) Week Conference. The conference recognizes the role that minority entrepreneurs play in building the American economy through the creation of jobs, products and services, in addition to supporting their local communities. It includes the private, non-profit, and government sectors and provides a venue to discuss critical business issues affecting minority business as well as strategies to foster the growth and competitiveness of the minority business community. The MED Week Awards Program is a key element in the conference as it celebrates the outstanding achievements of minority entrepreneurs. MBDA has created categories of awards including Minority Construction Firm of the Year, Minority Manufacturer of the Year, Minority Retail or Service Firm of the Year, Minority Technology Firm of the Year, Minority Supplier Distributor of the Year, Advocate of the Year, Media Award, Distinguished Supplier Diversity Award, Access to Capital Award, the Ronald H. Brown Leadership Award, and the Abe Venable Award for Lifetime Achievement. Nominations for these awards are to be open to the public. MBDA must collect two kinds of information: (a) Information identifying the nominee and nominator and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The awards are strictly honorary.

*Affected Public:* Business or other for-profit organizations; Not-for-profit institutions; State, local, or tribal government; Federal government.

*Frequency:* One-time only, on occasion, and annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Nicholas Fraser, (202) 395-5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek,

Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395-7285, or [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov).

Dated: March 9, 2009.

**Gwellnar Banks,**  
 Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-5409 Filed 3-12-09; 8:45 am]

**BILLING CODE 3510-21-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 9-2009]

### Foreign-Trade Zone 114 -- Peoria, Illinois, Area, Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Economic Development Council for Central Illinois, Inc., grantee of FTZ 114, requesting authority to reorganize and expand its zone project adjacent to the Peoria Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 6, 2009.

FTZ 114 was approved on December 21, 1984 (Board Order 288, 50 FR 1606, 1/11/85). The general-purpose zone project currently consists of the following sites (314 acres total): *Site 1* (88 acres) -- located at 1925 Darst Street, Peoria; *Site 2* (150 acres) -- United Facilities, Inc., 603 North Main Street, East Peoria; *Site 3* (17 acres) -- located at 1001 Wesley Road, Creve Coeur; *Site 4* (2 acres) -- located at 5703 Smithville Road, Bartonville; *Site 5* (37 acres) -- located at 278 Koch Street, Pekin; *Site 5A* (145,000 sq. ft.) -- located at 2314 E. Wilkins Drive, Mossville; and, *Site 6* (17 acres, 2 parcels) -- located at 6409 West Smithville Road, Bartonville.

The applicant is now requesting authority to reorganize and expand the general-purpose zone project as follows: delete *Existing Site 3* in its entirety due to changed circumstances; and, add two new sites: *Proposed Site 7* (360 acres) --



located at the former Chanute Air Force Base, 601 S. Century Boulevard, Rantoul; and, *Proposed Site 8* (333 acres) -- Logistics Park Galesburg, 659 Knox Road 1440N (U.S. 150 East and I-74), Galesburg. The proposal would result in an overall net increase of 676 acres in total zone space. The proposed sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is May 12, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 27, 2009).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz). For further information, contact Camille Evans at [Camille\\_Evans@ita.doc.gov](mailto:Camille_Evans@ita.doc.gov) or (202) 482-2350.

Dated: March 6, 2009.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. E9-5484 Filed 3-12-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 8-2009]

#### **Review of Sourcing Change, Foreign-Trade Subzone 7M, Amgen Manufacturing Limited (Biotechnology and Healthcare Products), Juncos, Puerto Rico**

Pursuant to the regulations of the Foreign-Trade Zones (FTZ) Board (the Board), a review has been initiated (under 15 CFR Sec. 400.28(a)(3)(iii)(A)) of changes in sourcing related to certain packaging products at Foreign-Trade Subzone 7M, at the facility of Amgen

Manufacturing Limited (Amgen), in Juncos, Puerto Rico.

Subzone 7M was approved by the Board on December 11, 2008 (Board Order 1597, 73 FR 78290-78291, 12/22/08), for the manufacturing and distribution of biotechnology and healthcare products under FTZ procedures. On products shipped to the U.S. market, the company is able to choose the duty rate during customs entry procedures that applies to the finished products (duty-free) for the otherwise dutiable foreign components (duty-free to 2.7%). Components sourced from abroad include vials, syringes, stoppers, plunger rods, partitions and dispenser packs.

Amgen has now notified the Board of additional sourcing of foreign packaging components. The imported components are PVC film (duty rate 5.8%) and a plastic device to be used with a syringe in the self-injection process (duty rate, 5.3%). The use of FTZ procedures for the additional components could exempt Amgen from customs duty payments on the foreign components used in export production. The company estimates that some 48 percent of the plant's shipments are exported. On its domestic sales, Amgen would be able to choose the duty rate during customs entry procedures that applies to the finished pharmaceutical products (duty-free) for the foreign inputs noted above. The finished pharmaceutical products remain unchanged and were included in the scope of manufacturing authority approved by the FTZ Board.

In accordance with the Board's regulations, Elizabeth Whiteman is designated examiner to investigate the sourcing change, including its potential to cause "significant adverse effects" (15 CFR 400.28(a)(3)(iii)(A)), and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 2009.

A copy of the sourcing change notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at

[Elizabeth\\_Whiteman@ita.doc.gov](mailto:Elizabeth_Whiteman@ita.doc.gov) or (202) 482-0473.

Dated: March 5, 2009.

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. E9-5486 Filed 3-12-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-882]

#### **Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Continuation of Antidumping Duty Order**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty order on refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of this antidumping duty order.

**EFFECTIVE DATE:** March 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger, Katherine Johnson, or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136, (202) 482-4929, and (202) 482-0182, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 1, 2008, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on RBAO from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-year ("Sunset") Reviews 73 FR 57055 (October 1, 2008).

The Department conducted an expedited sunset review of this order. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked. See Refined Brown Aluminum Oxide

from the People's Republic of China: Final Results of Expedited Sunset Review, 74 FR 4138 (January 23, 2009). On March 6, 2009, the ITC published its determination pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on RBAO from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Refined Brown Aluminum Oxide from China; Determination, 74 FR 9830 (March 6, 2009).

#### Scope of the Order

The merchandise covered by this order is ground, pulverized or refined brown artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheadings 2818.10.20.00 and 2818.10.20.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

#### Continuation

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on RBAO from the PRC.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than February 2014.

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: March 9, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-5478 Filed 3-12-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-882]

#### Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 13, 2009.

**FOR FURTHER INFORMATION CONTACT:**

David Goldberger or Kate Johnson at (202) 482-4136 or (202) 482-4929, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 1, 2008, the Department of Commerce (the Department) published the preliminary results of the 2006-2007 administrative review of the antidumping duty order on refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC) covering the period November 1, 2006, to October 31, 2007. *See Refined Brown Aluminum Oxide from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 72767 (December 1, 2008). The final results for this administrative review are currently due no later than March 31, 2009, 120 days from the date of publication of the preliminary results of review.

#### Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department requires additional time to analyze the interested party comments concerning the issue of the appropriate surrogate value for the major raw material input in the production of RBAO. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. Accordingly, the final results are now due no later than June 1, 2009, the next business day after 180 days from the date of publication of the preliminary results of review.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 9, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-5488 Filed 3-12-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-845; A-583-831]

#### Stainless Steel Sheet and Strip in Coils from Japan and Taiwan: Notice of Extension of Time Limit for Preliminary Results of the 2007-2008 Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 13, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Rebecca Trainor or Kate Johnson (Japan) at (202) 482-4007 or (202) 482-4929, respectively, and Henry Almond (Taiwan) at (202) 482-0049, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 26, 2008, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of administrative reviews of the antidumping duty orders on stainless steel sheet and strip in coils from Japan and Taiwan, covering the period July 1, 2007, through June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008).

The preliminary results for these administrative reviews are currently due no later than April 2, 2009.

#### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

#### Extension of Time Limit for Preliminary Results

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because additional information from the respondents is necessary to complete our analysis and we will not have sufficient time to obtain and analyze the new information prior to the current deadline for the preliminary results (*i.e.*, 245 days). Furthermore, we require additional time to conduct verifications in the review of stainless steel sheet and strip in coils from Japan. Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days, in accordance with section 751(a)(3)(A) of the Act. The preliminary results are now due no later than July 31, 2009. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 9, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-5493 Filed 3-12-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-933]

#### Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* March 13, 2009.

**SUMMARY:** The Department of Commerce (the "Department") has determined that frontseating service valves ("FSVs") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV") as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Eugene Degnan or Lori Apodaca, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0414 or (202) 482-4551, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

The Department published its preliminary determination of sales at LTFV on October 22, 2008. *See Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 62952 (October 22, 2008) ("Preliminary Determination"). The period of investigation ("POI") is July 1, 2007, to December 31, 2007.

Between November 10 and December 18, 2008, the Department conducted verifications of Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd. ("DunAn Hetian") and their U.S. subsidiary, DunAn Precision, Inc. ("DunAn Precision") (collectively, "DunAn")<sup>1</sup>

<sup>1</sup> See Verification of the Sales and Factors Response of DunAn in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China, dated January 15, 2009 ("DunAn Verification Report"); and Verification of the U.S. sales questionnaire

and Zhejiang Sanhua Co., Ltd. ("Zhejiang Sanhua") and Sanhua International Inc. ("Sanhua International") (collectively "Sanhua").<sup>2</sup> See the "Verification" section below for additional information.

We invited interested parties to comment on the *Preliminary Determination* and on January 26, 2009, Parker-Hannifin Corporation ("Petitioner") and DunAn filed case briefs. On February 2, 2009, Petitioner, DunAn and Sanhua filed rebuttal briefs. The Department held a hearing on February 12, 2009.

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by DunAn and Sanhua for use in our final determination. See the Department's verification reports on the record of this investigation in the Central Records Unit ("CRU"), Room 1117 of the main Department building, with respect to these entities. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Frontseating Service Valves from the People's Republic of China: Issues and Decision Memorandum" ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the CRU, and is accessible on the Web <http://trade.gov/ia/index.asp>. The paper copy

responses of Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd., and their U.S. subsidiary DunAn Precision Inc. in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China, dated January 14, 2009 ("DunAn CEP Verification Report").

<sup>2</sup> See Verification of the Sales and Factors Response of Zhejiang Sanhua Co., Ltd. in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China, dated January 16, 2009 ("Sanhua Verification Report"), and Verification of the U.S. Sales Response of Zhejiang Sanhua Co., Ltd. and Sanhua International Inc. in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China, dated January 16, 2009 ("Sanhua CEP Verification Report").

and electronic version of the memorandum are identical in content.

### Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination for all mandatory respondents.

### General Issues

#### *Calculation of Surrogate Financial Ratios*

- For the final determination, we are calculating the surrogate financial ratios using the statements of Siddhi Cast Private Limited ("Siddhi"), Pyrocast India Private Ltd. ("Pyrocast"), and Dharpat Casting Private Ltd ("Dharpat"). See Issues and Decision Memorandum at Comment 1.

#### *Calculation of Surrogate Values*

- For the final determination, we are valuing the inputs of brass connection tube heads and connection tube caps using WTA data for Indian HTS category 7412.20.19. See Issues and Decision Memorandum at Comments 6f and 6h.
- For the final determination, we are valuing valve cores using WTA data for Indian HTS category 8481.90.90. See Issues and Decision Memorandum at 7.

### Company-Specific Issues

#### *DunAn*

- For the final determination, we are using the U.S. sales and factor of production ("FOP") databases submitted by DunAn on January 22, 2009.
- For the final determination, we applied, as partial AFA to certain of DunAn's December 2007 sales, a rate of 55.62 percent (the rate from the initiation of this proceeding) which constitutes the highest rate from this proceeding. See Memorandum regarding "Application of Partial Adverse Facts Available for Zhejiang DunAn Precision Industries Co., Ltd., Zhejiang DunAn Hetian Metal Co., Ltd., and their U.S. subsidiary DunAn Precision Inc. in the Antidumping Investigation of Frontseating Service Valves from the People's Republic of China" (March 6, 2009) ("Partial AFA Memo") and Issues and Decision Memorandum at Comment 12c.
- For the final determination, we applied, as partial AFA to the inventory carrying cost ("ICC") for all of DunAn's sales during the months of October, November and December 2007, the highest ICC calculated for any sale during the POI. See Partial AFA Memo

and Issues and Decision Memorandum at Comment 12c.

- For the final determination, we are allowing, in part, DunAn's claimed by-product offsets for scrap sold, and scrap recycled into the production of subject merchandise. See Issues and Decision Memorandum at Comment 12j, and DunAn Analysis Memorandum for the Final Determination, dated March 6, 2009.

#### *Sanhua*

- For the final determination, we are using the U.S. sales and FOP databases submitted by Sanhua on January 22, 2009. However, for eight transactions in the U.S. sales database, which did not contain price or selling expense data, we are applying, as facts available, the average margin calculated for each of the CONNUMs associated with these sales. See *Use of Facts Available*, below.
- For the final determination, we are allowing, in part, the by-product offset for scrap claimed by Sanhua. See Issues and Decision Memorandum at Comment 10g.
- For the final determination, to calculate normal value for certain sales that were sold during the POI but produced prior to the POI, we are using the FOPs of subject merchandise produced during the POI with the nearest similar physical characteristics (as demonstrated by the control numbers ("CONNUMs")) to those products. See Sanhua Analysis Memorandum for the Final Determination.

### Scope of Investigation

The merchandise covered by this investigation is frontseating service valves, assembled or unassembled, complete or incomplete, and certain parts thereof. Frontseating service valves contain a sealing surface on the front side of the valve stem that allows the indoor unit or outdoor unit to be isolated from the refrigerant stream when the air conditioning or refrigeration unit is being serviced. Frontseating service valves rely on an elastomer seal when the stem cap is removed for servicing and the stem cap metal to metal seat to create this seal to the atmosphere during normal operation.<sup>3</sup>

<sup>3</sup> The frontseating service valve differs from a backseating service valve in that a backseating service valve has two sealing surfaces on the valve stem. This difference typically incorporates a valve stem on a backseating service valve to be machined of steel, where a frontseating service valve has a brass stem. The backseating service valve dual stem seal (on the back side of the stem), creates a metal to metal seal when the valve is in the open position, thus, sealing the stem from the atmosphere.

For purposes of the scope, the term "unassembled" frontseating service valve means a brazed subassembly requiring any one or more of the following processes: the insertion of a valve core pin, the insertion of a valve stem and/or O ring, the application or installation of a stem cap, charge port cap or tube dust cap. The term "complete" frontseating service valve means a product sold ready for installation into an air conditioning or refrigeration unit. The term "incomplete" frontseating service valve means a product that when sold is in multiple pieces, sections, subassemblies or components and is incapable of being installed into an air conditioning or refrigeration unit as a single, unified valve without further assembly.

The major parts or components of frontseating service valves intended to be covered by the scope under the term "certain parts thereof" are any brazed subassembly consisting of any two or more of the following components: a valve body, field connection tube, factory connection tube or valve charge port. The valve body is a rectangular block, or brass forging, machined to be hollow in the interior, with a generally square shaped seat (bottom of body). The field connection tube and factory connection tube consist of copper or other metallic tubing, cut to length, shaped and brazed to the valve body in order to create two ports, the factory connection tube and the field connection tube, each on opposite sides of the valve assembly body. The valve charge port is a service port via which a hose connection can be used to charge or evacuate the refrigerant medium or to monitor the system pressure for diagnostic purposes.

The scope includes frontseating service valves of any size, configuration, material composition or connection type. Frontseating service valves are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85, of the Harmonized Tariff Schedule of the United States ("HTSUS"). It is possible for frontseating service valves to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In addition, if unassembled or incomplete frontseating service valves are imported, the various parts or components would be classified under HTSUS subheadings 8481.90.1000, 8481.90.3000, or 8481.90.5000. The HTSUS subheadings are provided for convenience and customs purposes, but the written

description of the scope of this proceeding is dispositive.

### Scope Comments

We set aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). In our *Initiation Notice*, we encouraged parties to submit comments regarding the scope of the merchandise under investigation by April 28, 2008. On April 28, 2008, Sanhua submitted scope comments. No other party submitted scope comments. On May 8, 2008, Petitioner submitted rebuttal scope comments. No other party submitted rebuttal comments. Sanhua requested that the Department limit the scope to FSVs made of brass or copper and not include forged products with integrated feet because it believes the scope as written covers too broad a range of service valves. Sanhua argues that service valves may erroneously be classified as FSVs when they enter the United States under the current scope description. Specifically, Sanhua contends that the scope as written currently suggests that FSVs are made of any material. Sanhua argues that, in fact, FSVs must stand up to certain operating conditions and brass FSVs are the only product that meet those conditions and demands. Petitioner argues that the Department should not consider any changes that would limit the scope to specific material composition or mounting type or that would attempt to remove all forged valve bodies from the scope.

In the *Initiation Notice*,<sup>4</sup> we stated that the scope of merchandise includes FSVs of any size, configuration, material composition or connection type. FSVs are classified under subheading 8481.80.1095, and also have been classified under subheading 8415.90.80.85 of the HTSUS. Additionally, we stated that it is possible for FSVs to be manufactured out of primary materials other than copper and brass, in which case they would be classified under HTSUS subheadings 8481.80.3040, 8481.80.3090, or 8481.80.5090. In the *Preliminary Determination* we stated that, based upon the above, we have preliminarily determined that the scope of the merchandise under consideration as it is currently written clearly describes the scope of the merchandise under consideration. No party submitted comments on scope issues

addressed in the *Preliminary Determination*. Therefore, we are not making any changes to scope of the proceeding in this final determination.

### Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development comparable to that of the PRC; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination* at 62954. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

### Separate Rates

In proceedings involving nonmarket economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that DunAn and Sanhua demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by DunAn and Sanhua demonstrates both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus both are eligible for separate rate status.

### Use of Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1)

and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” *See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1 (1994) (“SAA”) at 870.

For this final determination, in accordance with sections 773(c)(3)(A) and (B) of the Act and section 776(a)(2) and 776(b) of the Act, we have determined that the use of total adverse facts available (“AFA”) is warranted for the PRC entity, and partial adverse facts available is warranted for both DunAn and Sanhua, as discussed below.

### The PRC-Wide Entity

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. *See, e.g., Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents identified

<sup>4</sup> See *Frontseating Service Valves from the People’s Republic of China: Notice of Initiation of Antidumping Duty Investigation*, 73 FR at 20250, 2025 (April 15, 2008).

as receiving a separate rate in the "Final Determination Margins" section below. In the *Preliminary Determination*, the Department found that the PRC-wide entity did not respond to our requests for information because record evidence indicates there were more exporters of FSVs from the PRC during the POI than those that responded to the Q&V questionnaire or the full antidumping questionnaire. Therefore, in the *Preliminary Determination*, we treated these PRC exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. No additional information was placed on the record with respect to these entities after the *Preliminary Determination*. In addition, because the PRC-wide entity has not provided the Department with the requested information, pursuant to section 776(a)(2)(A), (B) and (C) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also SAA at 870. We have determined that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is warranted.

#### DunAn

The Department finds that it has insufficient information on the record to construct an accurate and otherwise reliable margin with respect to certain of DunAn's December 2007 U.S. sales, and to value DunAn's inventory carrying cost ("ICC") for all sales for the months of October, November and December 2007. Further, we find that the information is not on the record, and that DunAn significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2) of the Act. Accordingly, the Department is using the facts otherwise available. Moreover, because the Department finds that DunAn failed to cooperate to the best of its ability, pursuant to Section 776(b) of the Act, the Department has determined

to use an adverse inference when applying partial facts available in this review. Accordingly, as partial AFA for certain U.S. sales, the Department is applying the rate from the initiation, which is 55.62 percent.

Additionally, to value ICC for sales that took place in the months of October, November or December 2007, we have selected as partial AFA the highest ICC expense calculated for any sale during the POI. For a full discussion of this issue see Partial AFA Memo.

#### Sanhua

On January 16, 2009, subsequent to the verification of Sanhua, we requested that Sanhua submit revised FOP and U.S. sales data bases, incorporating all prior corrections and any additional corrections to its data based on the results of the verification. In that request, we notified Sanhua that upon receipt of a response that is incomplete or deficient, the Department may proceed with the use of facts available. Analysis of the data submitted in the U.S. sales database shows that for eight transactions Sanhua did not include either the sales prices of the FSVs or the selling expenses associated with those sales. Because the Department did not alert Sanhua to this deficiency, and because these eight sales comprise a very small percentage of overall sales that would not have a significant effect on the margin calculation, we have determined to apply to these sales, as facts available, the average margin calculated for each of the CONNUMs associated with these sales.

#### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5568 (February 4, 2000); see, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November

6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we corroborated our AFA margin by comparing it to the margins we found for the respondents. We found that the margin from the initiation, 55.62 percent, had probative value because it was in the range of margins we found for the mandatory respondents. Similarly, for the final determination, we have also compared the margin from the initiation to the margins calculated for the respondents. We found that the margin from the initiation is within the range of the margins calculated for the mandatory respondents in this investigation.

Because no parties commented on the selection of the PRC-wide rate, we continue to find that the margin of 55.62 percent has probative value. Accordingly, we find that the rate of 55.62 percent is corroborated within the meaning of section 776(c) of the Act.

#### Critical Circumstances

In the *Preliminary Determination*, we did not find that critical circumstances exist with respect to either the PRC-wide entity or the mandatory respondents. For this final determination, we continue to find that critical circumstances do not exist with respect to either the PRC-wide entity or the mandatory respondents. For a detailed discussion of our findings, see Issues and Decision Memorandum at Comment 2.

#### Combination Rates

In the *Preliminary Determination*, the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. See *Preliminary Determination*, 73 FR at 62961. This change in practice is described in Policy Bulletin 05.1, "Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," available at <http://ia.ita.doc.gov/policy/index.html>.

#### Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter/Producer combination	Per- cent margin
Exporter: Zhejiang Sanhua Co., Ltd. Producer: Zhejiang Sanhua Co., Ltd.	28.44
Exporter: Zhejiang DunAn Hetian Metal Co., Ltd. Producer: Zhejiang DunAn Hetian Metal Co., Ltd.	12.95
PRC-Wide Entity * .....	55.62

\* The PRC-wide entity includes Tianda.

### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 22, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation instructions will remain in effect until further notice.

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 6, 2009.

**Ronald K. Lorentzen,**  
*Acting Assistant Secretary for Import Administration.*

### APPENDIX I—LIST OF ISSUES IN THE ACCOMPANYING ISSUES AND DECISION MEMORANDUM

#### I. General Issues

- Comment 1: Selection of Surrogate Financial Statements and Calculation of the Surrogate Financial Ratios
- Comment 1a: Treatment of Job Work Expenses
- Comment 1b: Treatment of Commissions, Advertising and Other Selling Expenses
- Comment 1c: Treatment of Other Income Earned From Non-Essential Business
- Comment 1d: Treatment of Taxes Other Than Corporate Income Tax or Value Added Tax
- Comment 1e: Treatment of Generator Expenses
- Comment 1f: Treatment of "Gratuity" Benefit Program Expenses
- Comment 2: Whether Critical Circumstances Exist for Both Respondents and the PRC-Entity
- Comment 3: Regression Analysis for the Labor Wage Rate
- Comment 4: Whether to Exclude Imports from Japan, France and the UAE in the Surrogate Value Calculation for Brass Bar
- Comment 5: Whether to Exclude Imports of Sri Lankan Re-Melted Brass Ingots and Cast "Wire Bars" from the Surrogate Value Calculation for Brass Bar
- Comment 6: Valuation of Valve Components Other Than Valve Cores
- Comment 7: Valuation of Valve Cores
- Comment 8: Surrogate Value Source for Electricity

#### II. Sanhua-Specific Issues

- Comment 9: Whether to Apply Total Adverse Facts Available to Sanhua
- Comment 10: Whether to Apply Partial Adverse Facts Available to Sanhua
- Comment 10a: Certain Unreported U.S. Sales
- Comment 10b: Certain Omitted Credit Memos
- Comment 10c: Unreported Shrink Wrap
- Comment 10d: Pallet Use

- Comment 10e: Material and Exchange Rate Surcharges
- Comment 10f: Missing International Movement Expenses
- Comment 10g: Scrap Offsets
- Comment 10h: Unreported Electricity Consumption
- Comment 10i: Unreported Ammonia Consumption
- Comment 10j: Weight of Cardboard Cartons
- Comment 10k: Plastic Bags for Scrap

### III. DunAn-Specific Issues

- Comment 11: Whether to Apply Total Adverse Facts Available to DunAn
- Comment 12: Whether to Apply Partial Adverse Facts Available to DunAn
- Comment 12a: Affiliation With U.S. Customer
- Comment 12b: Whether DunAn Reported Wrong Date of Sale
- Comment 12c: Whether DunAn Failed to Reconcile Quantity and Value and Completeness
- Comment 12d: Reported Weights
- Comment 12e: Cost Reconciliation
- Comment 12f: Brass Bar and Other Materials
- Comment 12g: Electricity Consumption
- Comment 12h: Ammonia Consumption
- Comment 12i: Labor Consumption
- Comment 12j: By-Product Offset for Brass Scrap
- Comment 13: Weight of Pallets Consumed

[FR Doc. E9-5480 Filed 3-12-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Mission Statement; Aerospace Supplier Development Mission to Canada; May 5-6, 2009

**AGENCY:** Department of Commerce.

**ACTION:** Notice.

#### Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service in Canada is organizing an Aerospace Supplier Development Mission to Montreal, May 5-6, 2009. This aerospace mission is designed to provide U.S. aerospace export-ready, small to medium-sized companies (SMEs) with a highly efficient and cost-effective opportunity to establish profitable commercial relations with prospective agents, distributors and end-users in Canada's aerospace market. Participating U.S. companies will receive market intelligence briefings by Canadian industry experts, networking opportunities and most importantly, pre-scheduled, pre-screened one-on-one meetings with Canadian aerospace company representatives. Mission participants will also benefit from



visiting key local aerospace original equipment manufacturers (OEM) and speaking with procurement managers about supply chain opportunities. This mission is an ideal opportunity for U.S. aerospace companies to gain valuable international business experience in a low risk, highly important market. Canada has the fifth largest aerospace industry in the world. This mission presents strong potential for high returns given these factors and the ongoing support of the U.S. Commercial Service in Canada. U.S. participants will also have the option to go on to Toronto, Ottawa, Calgary or Vancouver for additional matchmaking services.

### Commercial Setting

Canada is a very receptive market to U.S. goods and services and represents an ideal opportunity for the U.S. Commercial Service, both in the United States and Canada, to advance our ITA goals to broaden and deepen the U.S. exporter base and help our SMEs achieve export success. The United States and Canada share the largest and most dynamic commercial relationship in the world. In 2008, two-way merchandise trade crossing our common border with Canada stood at US\$596.9 billion, or more than US\$1.6 billion per day as U.S. exports to Canada grew by 5.0 percent. Today, U.S. trade with Canada exceeds total U.S. trade with the 27 countries of the European Union combined. Canada also represents the number one export market for 36 of our 50 states and is among the top five export markets for another ten states.

In 2008, Canada was the fourth largest export market for U.S. aerospace products, generating close to US\$7.5 billion in U.S. export sales. Canada's aerospace industry is the fifth largest in the world; in 2007 total aerospace sales were US\$22.7 billion, of which US\$16.5 billion were in the aircraft and aircraft parts industry sub-sector. Canada is a world leader in the global aerospace industry and a market leader in regional aircraft, commercial helicopters, turbine engines, flight simulators and a broad range of aircraft systems, components

and equipment. Quebec is at the heart of the Canadian Aerospace Industry. Over 60 percent of all Canadian aerospace production and approximately 70 percent of Canadian aerospace research and development is performed within a 30-mile radius of Montreal. Quebec's aerospace industry alone is the sixth largest in the world.

Montreal is home to renowned industry leaders such as Bombardier Aerospace, Bell Helicopter Textron, Pratt & Whitney Canada, and CAE. To this exceptional concentration of world leaders, we can add other big names such as Rolls-Royce Canada, Héroux Devtek, Messier-Dowty, CMC Electronics—Esterline, Thales, and many other suppliers, mostly SMEs, which form a cluster of over 250 aerospace firms.

Canada's geographic proximity, open market economy, stable business climate and receptivity to U.S. goods and services make it the number one gateway to the international marketplace for thousands of U.S. export-ready SMEs. The North American Free Trade Agreement (NAFTA), which provides U.S. NAFTA qualifying products with duty-free entry into Canada, also contributes to the relatively low-cost, low-risk, access that U.S. SMEs can use to prosper and grow in the global marketplace.

### Mission Goals

The trade mission's goal is to introduce U.S. exporters of aerospace supply chain products to potential end-users and partners, including potential agents, distributors, and licensees, with the aim of creating business partnerships that will contribute to increasing U.S. exports to the Canadian aerospace market, particularly the aircraft and aircraft parts market. The trade mission's goal intends to advance ITA's goal to broaden and deepen the U.S. exporter base by providing individual participants with opportunities to achieve aerospace export success in Canada. A particular focus on NTE/NTM companies will be made in our recruitment process to help

these companies export successfully to Canada.

### Mission Scenario

Participants in the mission to Canada will benefit from a full range of business facilitation and trade promotion services provided by the U.S. Commercial Service in Canada, including: Meetings with individuals from both the public sector (e.g., aerospace trade officers) and private business. Participants will receive a briefing by a panel of experts on the Canadian and Quebec aerospace markets, as well as an overview of the country's economic and political environment. The mission will include one-on-one business meetings between U.S. participants and potential Canadian end-users and partners, and tours of some of the largest original aerospace manufacturers, where companies will have the opportunity to meet senior OEM representatives and learn about planned projects and expected procurement needs. A networking event is being planned in Montreal. Follow-on Gold Key service with business meetings in other Canadian cities can be set up after the trade mission to Montreal for an additional price, depending on participants' wishes.

Matchmaking efforts will include the support of the following Canadian Aerospace Industry multipliers: Quebec Ministry of Economic Development, Export and Innovation, Industry Canada, the Canadian Department of Foreign Affairs and International Trade and the Quebec Aerospace Association.

Prior to the end of the mission, Commercial Service staff will counsel participants on follow-up procedures.

### Proposed Mission Timetable

The proposed schedule allows for about two full days in Montreal. Efforts will be made to accommodate participating companies who express an interest in traveling to a second Canadian city after the Montreal program for additional matchmaking services.

Monday, May 4, 2009 .....	Mission members arrive in Montreal; No-host dinner.
Tuesday, May 5, 2009 .....	Market briefing; Business matchmaking; Networking event.
Wednesday, May 6, 2009 .....	Visits to several Canadian aerospace OEMs and opportunity to meet with procurement managers; De-briefing; Departure from Montreal.

### Participation Requirements

All parties interested in participating in the Commercial Service Aerospace Supplier Development Mission to Canada must complete and submit an application package for consideration by the Department of Commerce. All

applicants will be evaluated on their ability to satisfy the selection criteria as outlined below. A minimum of 10 and maximum of 15 companies will be considered for the mission.

### Fees and Expenses

After a company has been selected to participate on the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee will be \$3,100 for large firms and \$2,000 for a small or

medium-sized enterprise (SME),\* with up to two company representatives. The fee for more than two company representatives is \$250 per additional participant. Expenses for travel, lodging, in-country transportation (except for bus transportation to visit local aerospace OEMs on the second day of the mission), meals and incidentals will be the responsibility of each mission participant.

#### Conditions for Participation

- An applicant must submit a completed and signed Mission Participation Agreement and a completed Market Interest Questionnaire, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

- Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

#### Selection Criteria

Selection will be based on the following criteria:

- Suitability of the company's products or services for the Canadian aerospace market.
- Applicant's potential for business in Canada, including the likelihood of exports resulting from the mission.
- Consistency in the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

#### Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public

manner. Outreach will include posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Canada is conducting a webinar on aerospace opportunities in the Canadian aerospace market on March 17, 2009. We intend to promote the Aerospace Supplier Development Mission to Canada during the webinar.

The mission will be open on a first-come, first-served basis. Recruitment for the mission will begin immediately and close on April 6, 2009. Applications received after April 6, 2009, will be considered only if space and scheduling constraints permit. Applications will be available online on the mission Web site at: <http://www.buyusa.gov/Canada>.

#### Contacts

Gina Bento, Aerospace Commercial Specialist, U.S. Consulate General in Montreal, P.O. Box 65 Desjardins Station, Montreal, QC H5B 1G1, Tel: 514-908-3660, e-mail: [Gina.Bento@mail.doc.gov](mailto:Gina.Bento@mail.doc.gov).

Diane Mooney, U.S. Commercial Service in Seattle, Tel: 206.553.5615, ext. 236, e-mail: [Diane.Mooney@mail.doc.gov](mailto:Diane.Mooney@mail.doc.gov).

Eric Nielsen, U.S. Commercial Service in Tucson, Tel: 520-670-5808, e-mail: [Eric.Nielsen@mail.doc.gov](mailto:Eric.Nielsen@mail.doc.gov).

#### Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. E9-5516 Filed 3-12-09; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Mission Statement

**AGENCY:** Department of Commerce.

**ACTION:** Notice.

Mission Statement, Executive Trade Mission to Chile and Peru, June 1-5, 2009.

#### Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing an Executive Trade Mission to Santiago, Chile, and Lima Peru, June 1-5, 2009, to be led by Walter Bastian, Deputy Assistant Secretary for the Western Hemisphere. The mission will focus on

helping U.S. companies launch or increase their export business in these key South American markets. It will also help participating firms gain market information, make business and industry contacts, and solidify business strategies, towards the goal of increasing U.S. exports to these important Free Trade Agreement (FTA) partners. The mission will include business-to-business matchmaking appointments with local companies, as well as market briefings and networking events. The mission will be comprised of U.S. firms representing a cross section of U.S. industries with growing potential in the target markets, including, but not limited to the following sectors: construction, electric power generation, food processing and packaging, environmental protection, information technology, mining, oil and gas, safety and security, and telecommunications.

#### Commercial Setting

##### Chile

As the United States and Chile FTA continues into its fifth year, commercial trade, both in products and services, has been a resounding success. In 2008, bilateral trade between the United States and Chile reached US\$20.3 billion, a 216% increase over bilateral trade levels before the U.S.-Chile FTA took effect. Even more impressively, U.S. exports to Chile in 2008 showed a 345% increase over pre-FTA levels.

Chile remains one of the most stable and prosperous developing nations, enjoying a reputation for political stability, economic freedom, and comparatively low poverty. Chile continues to pursue market-oriented strategies, expand global commercial ties, and actively participate in international issues and hemispheric free trade.

Chile offers a unique opportunity for U.S. exporters interested in expanding their businesses in one of the most open, stable and attractive markets in Latin America. Reflecting growing trade relations, Chile's ranking as a top U.S. export market rose to 25th in 2008, from 35th place in 2003.

##### Peru

Peru represents an expanding market for U.S. goods and services. In response to eased market access conditions, U.S. exports to Peru have doubled over four years, reaching an estimated US\$6 billion in 2008. This trend should be reinforced as a result of the U.S. Peru Trade Promotion Agreement (referred to as the U.S.-Peru Free Trade Agreement, or FTA), which entered into force February 1, 2009, leveling the playing

\* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see [http://www.sba.gov/services/contracting\\_opportunities/sizestandardstoc/index.html](http://www.sba.gov/services/contracting_opportunities/sizestandardstoc/index.html)). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

field for U.S. companies seeking access to the Peruvian market.

The FTA makes 80 percent of U.S. consumer and industrial products eligible for duty-free entry into Peru, with the remaining tariffs phased-out over ten years. It also specifies enhanced access to services markets and greater protection of intellectual property rights. The U.S. International Trade Commission estimates that the FTA will boost annual U.S. exports to Peru by US\$1.1 billion.

Peru has achieved some of the highest economic growth rates in Latin

America, averaging above five percent annually during the past seven years. The United States, Peru's leading trading partner, purchased 21 percent of Peru's exports and supplied 21 percent of the country's imports in 2008. Bilateral trade has tripled over the past decade, exceeding US\$12 billion in 2008, with Peru the 40th largest export market for U.S. goods.

#### Mission Goals

This trade mission is designed to help U.S. firms initiate or expand their exports to Chile and Peru by providing

business-to-business introductions and market access information.

#### Mission Scenario

The mission will stop in Santiago, Chile, and Lima Peru. In each city, participants will meet with pre-screened potential buyers, agents/distributors, and other business partners. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

#### Proposed Mission Timetable

Monday, June 1, 2009 .....	Santiago, Chile Market Briefing, Matchmaking Appointments, Networking Reception.
Tuesday, June 2, 2009 .....	Matchmaking Appointments.
Wednesday, June 3, 2009 .....	Travel to Peru.
Thursday, June 4, 2009 .....	Lima, Peru Market Briefing, Matchmaking Appointments, Networking Reception.
Friday, June 5, 2009 .....	Matchmaking Appointments.

#### Participation Requirements

All parties interested in participating in the Executive Trade Mission to Chile and Peru must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of seven U.S. companies and maximum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Chile and Peru as well as U.S. companies seeking to enter these countries for the first time may apply.

#### Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be \$5,575 for large firms and \$3,500 for a small or medium-sized enterprise (SME).<sup>\*</sup> The fee for each additional firm representative (large firm or SME) is \$450. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. The same fee structure applies to representatives of U.S.-based

firms stationed in Chile, Peru, or neighboring countries.

#### Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

**Selection Criteria:** Selection will be based on the following criteria, listed in decreasing order of importance:

- Suitability of the company's products or services for the Chilean and Peruvian markets
- Applicant's potential for business in Chile and Peru, including likelihood of exports resulting from the mission
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's

submission and not considered during the selection process.

#### Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (<http://www.ita.doc.gov/doctm/tmcal.html>) and other Internet Web sites, press releases to general and trade media, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The mission will open on a first come first served basis. Recruitment will begin immediately and close April 17, 2009. Applications received after April 17, 2009, will be considered only if space and scheduling constraints permit. Applications are available online on the mission Web site at <http://www.export.gov/andeanmission>. They can also be obtained by contacting the Mission Project Officers listed below.

#### Contacts

Louis Quay, Commercial Service Trade Missions Program, Tel: 202-482-3973, E-mail: [Louis.Quay@mail.doc.gov](mailto:Louis.Quay@mail.doc.gov).

Jessica Arnold, Commercial Service Trade Missions Program, Tel: 202-

<sup>\*</sup>An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see <http://www.sba.gov/services/contractingopportunities/sizestandardstoc/index.html>). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see <http://www.export.gov/newsletter/march2008/initiatives.html> for additional information).

482–2026, E-mail:  
[Jessica.Arnold@mail.doc.gov](mailto:Jessica.Arnold@mail.doc.gov).

**Sean Timmins,**

*Trade Specialist, Global Trade Programs,  
Commercial Service Trade Missions Program.*

[FR Doc. E9–5531 Filed 3–12–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Federal Consistency Appeal by Broadwater Energy LLC and Broadwater Pipeline LLC

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

**ACTION:** Notice of closure—administrative appeal decision record.

**SUMMARY:** This announcement provides notice that the decision record has closed for an administrative appeal filed with the Department of Commerce by Broadwater Energy LLC and Broadwater Pipeline LLC (collectively, “Broadwater”).

**DATES:** The decision record for Broadwater’s administrative appeal closed on February 13, 2009.

**ADDRESSES:** Materials from the appeal record are available at the NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: <http://www.ogc.doc.gov/czma.htm>.

**FOR FURTHER INFORMATION CONTACT:** Jamon Bollock, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, NOAA Office of the General Counsel, 301–713–2967, [gcos.inquiries@noaa.gov](mailto:gcos.inquiries@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On June 6, 2008, Broadwater filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, subpart H. Broadwater appealed an objection by the State of New York to its proposed construction of a liquefied natural gas (“LNG”) terminal, sendout pipeline, and appurtenant facilities in the New York state waters of Long Island Sound.

Decisions for CZMA administrative appeals are based on information contained in a decision record. Under the CZMA, the decision record must close no later than 220 days after notice of the appeal was first published in the *Federal Register*. See 16 U.S.C. 1465.

Consistent with this deadline, the Broadwater appeal decision record closed on February 13, 2009. No further information or briefs will be considered in deciding this appeal.

Additional information about the Broadwater appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site <http://www.ogc.doc.gov/czma.htm>.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: March 6, 2009.

**Joel La Bissonniere,**

*Assistant General Counsel for Ocean Services,  
National Oceanic and Atmospheric Administration.*

[FR Doc. E9–5509 Filed 3–12–09; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO03**

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee in April, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, April 2, 2009 at 9 a.m.

**ADDRESSES:** *Meeting address:* This meeting will be held at the Hotel Providence, 311 Westminster Street, Providence, RI 02903; telephone: (401) 861–8000; fax: (401) 861–8002.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.  
**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Committee will discuss several outstanding issues related to development of Amendment 15 measures, specifically, refinement of measures to comply with new annual

catch limit (ACL) requirements including accountability measures (AMs) for the scallop fishery (for both the scallop resource and incidental catch of yellowtail flounder). The Committee will also discuss other outstanding issues related to measures under development for leasing DAS and access area trips, permit and/or quota splitting for general category IFQ permit holders and other issues. The committee will discuss potential issues to be considered in Framework 21. The Council is scheduled to initiate Framework 21 at the April Council meeting. The primary purpose of Framework 21 is to set management measures for fishing year 2010. The committee may discuss other topics at their discretion.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 10, 2009.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–5451 Filed 3–12–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO04**

#### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene the SEDAR Gag/Red Grouper Update Workshop (SEDAR).

**DATES:** The meeting will convene at 1:00 pm on Monday, March 30, 2009 and conclude no later than 1:00 pm on Thursday, April 2, 2009.

**ADDRESSES:** The meeting will be held at the NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

**FOR FURTHER INFORMATION CONTACT:**

Steven Atran, Population Dynamic Statistician, Gulf of Mexico Fishery Management Council; telephone: 813-348-1630.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) will convene the SEDAR Gag/Red Grouper Update Workshop (SEDAR) to conduct update assessments of the SEDAR 10 gag stock assessment and the SEDAR 12 red grouper stock assessment. An update assessment is a single workshop that utilizes the assessment models and input parameters from the previous full SEDAR assessment, with minor modifications if any, and updated data streams to update the results of the previous full assessment. The SEDAR 10 gag assessment was completed in 2006, and was subsequently re-evaluated in May 2007 with corrections to recreational bycatch estimates. The assessment concluded that, as of 2004 (the final year of available catch data), the gag stock was not overfished, but it was undergoing overfishing. The SEDAR 12 red grouper assessment was completed in 2007. Using catch data through 2005, the assessment concluded that the stock had recovered from an overfished condition in the mid-1990s, and that as of 2005, the stock was not undergoing overfishing and stock biomass was slightly above its optimum yield (OY) target level.

A copy of the agenda and related materials can be obtained by calling the Council office at 813-348-1630.

Although other non-emergency issues not on the agendas may come before the SEDAR for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during this meeting. Actions of the SEDAR will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) five working days prior to the meeting.

Dated: March 10, 2009.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E9-5452 Filed 3-12-09; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF DEFENSE****Department of the Air Force****US Air Force Scientific Advisory Board Notice of Meeting**

**AGENCY:** Department of the Air Force, U.S. Air Force Scientific Advisory Board.

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on Tuesday, April 7th, 2009, at the Air Force Special Operations Command Training Squadron, 357 Tully St., Hurlburt Field, FL 32544. The meeting will be from 8 a.m.-4 p.m. The purpose of the meeting is to hold the SAB quarterly meeting to conduct classified discussions on Air Force Special Operations Command's mission, how their capabilities are used in the field, and how this information relates to the FY09 SAB studies tasked by the Secretary of the Air Force. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed

below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col David J. Lucia, 301-981-7135, United States Air Force Scientific Advisory Board, 1602 California Ave., Ste. #251, Andrews AFB, MD 20762, [david.lucia@pentagon.af.mil](mailto:david.lucia@pentagon.af.mil).

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*  
[FR Doc. E9-5447 Filed 3-12-09; 8:45 am]

**BILLING CODE 5001-05-P**

**DEPARTMENT OF DEFENSE****Department of the Army****Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Thermal Insulation for Articles of Clothing**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,494,946 entitled "Thermal Insulation for Articles of Clothing" issued February 24, 2009. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233-4184 or e-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*  
[FR Doc. E9-5460 Filed 3-12-09; 8:45 am]

**BILLING CODE 3710-08-P**

**DEPARTMENT OF DEFENSE****Department of the Army****Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Polymerization of Aromatic Monomers Using Derivatives of Hematin****AGENCY:** Department of the Army, DoD.**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. U.S. 7,479,329 entitled "Polymerization of Aromatic Monomers Using Derivatives of Hematin" issued January 20, 2009. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233-4184 or E-mail: [Jeffrey.Ditullio@natick.army.mil](mailto:Jeffrey.Ditullio@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9-5461 Filed 3-12-09; 8:45 am]

**BILLING CODE 3710-08-P**

**DEPARTMENT OF DEFENSE****Department of the Army; Corps of Engineers****The Release of the Draft Environmental Impact Statement (DEIS) and the Announcement of a Public Hearing for the Proposed Construction of the Western Wake Regional Wastewater Management Facilities, Which Includes Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities To Serve the Towns of Apex, Cary, Holly Springs and Morrisville, as Well as the Wake County Portion of Research Triangle Park (Service Area), NC**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division has been reviewing the request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act from the Town of Cary, acting as the lead for the Western Wake Regional Wastewater

Management Facilities Project Partners (Western Wake Partners), to construct Regional Wastewater Management Facility. The proposed project consists of regional wastewater pumping, conveyance, treatment, and discharge facilities to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County portion of Research Triangle Park (RTP South), NC.

The project is being proposed by the Western Wake Partners to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR).

**DATES:** The Public Hearing will be held at the Town of Apex Town Hall, 73 Hunter Street, Apex North Carolina, on April 14, 2009 at 6 p.m. Written comments on the Draft EIS will be received until April 27, 2009.

**ADDRESSES:** Copies of comments and questions regarding the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2005-20159, 69 Darlington Avenue, Wilmington, NC 28403. Copies of the Draft EIS can be reviewed on the Wilmington District Regulatory homepage at <http://www.saw.usace.army.mil/wetlands/projects/ww-wtp>, or contact Ms. Gwen Robinson, at (910) 251-4494, to receive written or CD copies of the Draft EIS.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS can be directed to Mr. Henry Wicker, Project Manager, Regulatory Division, telephone: (910) 251-4930.

**SUPPLEMENTARY INFORMATION:**

1. *Project Description.* The proposed project consists of regional wastewater pumping, conveyance, treatment, and discharge facilities to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as RTP South (service area), NC. The purpose of the project is to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR).

Regulatory Mandate No. 1—Interbasin Transfer: The Towns of Apex, Cary, and Morrisville, as well as Research Triangle Park (RTP) South, obtain their drinking water from Jordan Lake in the Cape Fear River Basin and discharge treated effluent to locations in the Neuse River Basin. Obtaining water from one basin and discharging it to another river basin is referred to as an interbasin transfer (IBT), which requires a permit from the EMC. In July 2001, the EMC granted the Towns of Apex, Cary, and Morrisville, as well as Wake County (on behalf of RTP South), an IBT certificate to withdraw water from the Cape Fear River Basin and discharge the water to the Neuse River Basin. However, as a condition of approval, the IBT certificate issued by the EMC requires the local governments to return reclaimed water to the Cape Fear River Basin after 2010. As a result, the local governments have initiated activities to plan, permit, design, and construct wastewater transmission, treatment, and disposal facilities in order to comply with the terms and conditions of the IBT certificate issued by the EMC. The facilities that will be described and evaluated in the environmental impact statement (DEIS) are needed to comply with the IBT certificate terms and conditions.

Regulatory Mandate No. 2—Nutrient Enrichment for Harris Lake: The Town of Holly Springs currently has a wastewater treatment plant (WWTP) that discharges to Utle Creek, which is a tributary to Harris Lake in the Cape Fear River Basin. Representatives from NCDENR have directed the Town of Holly Springs to remove the Town's wastewater discharge from Utle Creek due to nutrient enrichment issues in Utle Creek and downstream in Harris Lake. In addition, NCDENR has encouraged Holly Springs to participate with Apex, Cary and Morrisville on a regional wastewater management program that will allow Holly Springs to remove the Town's discharge from Utle Creek after 2010. Thus, Holly Springs is participating with Apex, Cary and Morrisville in the planning, permitting, design and construction of regional effluent disposal facilities in order to comply with the mandate issued by NCDENR to remove its discharge from Utle Creek. The regional effluent disposal facilities that will be described and evaluated in the DEIS are needed to comply with the NCDENR mandate.

The proposed project was reviewed to address a number of issues which includes an alternatives analysis, direct environmental impacts, secondary and cumulative environmental impacts, environmental justice concerns,

endangered species, and potential project costs.

2. *Proposed Action.* The proposed action is to construct a regional wastewater pumping, conveyance, treatment, and discharge facility to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as RTP South, North Carolina. The Towns have cooperated together to develop the proposal, and each town will be responsible for the permits for their part of the proposed project. It is anticipated there will be 4 permit requests to construct the whole project. Future request for Department of the Army authorization for other sections of the project will be submitted once the final plans have been completed.

This request for Department of the Army authorization consists of the construction of a regional wastewater system that includes the construction of influent conveyance facilities, a new water reclamation facility (WRF), and new effluent conveyance facilities in western Wake County and Chatham County, North Carolina to serve the Towns of Apex, Cary, and Morrisville and RTP South. The proposed WRF site is north of U.S. 1 and just south of Old U.S. 1 between New Hill-Holleman and Shearon Harris Roads. The WRF would be constructed in two phases to a proposed treatment capacity of 30-million gallons per day (mgd). The Town of Holly Springs Utley Creek Wastewater Treatment Plant (WWTP) has already been approved to expand to 6 MGD and will share the 38 MGD outfall to the Cape Fear River. The effluent line will leave the WRF in Wake County and enter Chatham County to the discharge point located on the Cape Fear River downstream of Buckhorn Dam in Chatham County.

As a result of the construction activities related to this permit request from Western Wake Partners, there will be temporary and permanent impacts to wetlands and streams. The total permanent impact of the proposed project is 509 of linear feet (lf) of stream (329 lf of perennial and 180 lf intermittent) and 1.8 acres of wetlands. The total temporary impact of the proposed project is 1,924 lf of stream (1,115 lf of perennial and 809 lf of intermittent) and 6.8 acres of wetlands. Most of these impacts are along the influent transmission lines.

3. *Alternatives.* An extensive alternatives analysis was performed and reviewed by the Project Delivery Team (PDT). This included the evaluation of wastewater management options; wastewater discharge options; WRF site alternatives; conveyance alternatives and wastewater outfall options. Many

alternatives were identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section or Chapter 2 of the Draft EIS.

4. *Scoping Process.* A public scoping meeting was held on April 19, 2007 and a Project Delivery Team (PDT) was developed to provide input in the preparation of the EIS. The PDT was comprised of representatives from local, state, and federal government, the Western Wake Partners, Wake County, Chatham County, and the New Hill Community.

The COE coordinated closely with the North Carolina Division of Water Quality Construction Grants and Loans Section in the development of the EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Draft EIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

Dated: March 4, 2009.

C. Scott McLendon,

Assistant Chief, Wilmington Regulatory District.

[FR Doc. E9-5563 Filed 3-12-09; 8:45 am]

BILLING CODE 3720-58-P

## DEPARTMENT OF DEFENSE

### Corps of Engineers

#### Department of the Army; Notice of Solicitation for Estuary Habitat Restoration Program

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of solicitation for project applications.

**SUMMARY:** Congress has appropriated limited funds to the U.S. Army Corps of Engineers (Corps) for implementation of the Estuary Habitat Restoration Program as authorized in Section 104 of the Estuary Restoration Act of 2000, Title I of the Estuaries and Clean Waters Act of 2000 (Pub. L. 106-457) (accessible at <http://www.usace.army.mil/CECW/ERA/pages/Default.aspx>). On behalf of the Estuary Habitat Restoration Council (Council), the Corps is soliciting proposals for estuary habitat restoration projects. This document describes project criteria and evaluation criteria the Council will use to determine which projects to recommend. Recommended projects must provide ecosystem benefits, have scientific merit, be technically feasible, and be cost-effective. Proposals selected for Estuary Habitat Restoration Program funding

may be implemented in accordance with a cost-share agreement with the Corps, a cooperative agreement with the Corps, or a cooperative agreement with one of the other agencies represented on the Council, subject to availability of funds.

**DATES:** Proposals must be received on or before May 12, 2009.

**ADDRESSES:** Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Cummings, (202) 761-4750, e-mail: [Ellen.M.Cummings@usace.army.mil](mailto:Ellen.M.Cummings@usace.army.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

Under the Estuary Habitat Restoration Program, the U.S. Army Corps of Engineers (Corps), Department of the Interior (acting through the U.S. Fish and Wildlife Service), National Oceanic and Atmospheric Administration, Environmental Protection Agency, and Department of Agriculture are authorized to carry out estuary habitat restoration projects. However, the Estuary Habitat Restoration Council (Council) is responsible for soliciting, reviewing and evaluating project proposals. The agencies may only fund projects on the prioritized list provided by the Council. The Estuary Habitat Restoration Strategy prepared by the Council contains introductory information about the program and provides the context in which projects will be evaluated and the program will be conducted. The Strategy was published in the **Federal Register** (67 FR 71942) on December 3, 2002. It is also accessible at <http://www.usace.army.mil/CECW/ERA/pages/Default.aspx> in PDF format.

An emphasis will be placed on achieving cost-effective restoration of ecosystems while promoting increased partnerships among agencies and between public and private sectors. Projects funded under this program will contribute to the Estuary Habitat Restoration Strategy goal of restoring 1,000,000 acres of estuary habitat.

For purposes of this program, *estuary* is defined as "a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water from land drainage." Estuary also includes the " \* \* \* near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries \* \* \*" For this program, estuary is considered to extend from the head of tide to the boundary with the open sea



(to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas adjacent to the mouths of creek or rivers entering the Great Lakes will be considered to be estuaries. Estuary habitat includes the estuary and its associated ecosystems, such as: Salt, brackish, and fresh water coastal marshes; coastal forested wetlands and other coastal wetlands; maritime forests; coastal grasslands; tidal flats; natural shoreline areas; shellfish beds; sea grass meadows; kelp beds; river deltas; and river and stream corridors under tidal influence.

## II. Eligible Restoration Activities

Section 103 of the Estuary Restoration Act of 2000 (the Act) defines the term *estuary habitat restoration activity* to mean "an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape." Projects funded under this program will be consistent with this definition.

Eligible habitat restoration activities include re-establishment of chemical, physical, hydrologic, and biological features and components associated with an estuary. Restoration may include, but is not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; appropriate reef/substrate/habitat creation; planting of native estuarine wetland and submerged aquatic vegetation; reintroduction of native species; control of invasive species by altering conditions so they are less conducive to the invasive species; and establishment of riparian buffer zones in the estuary. Cleanup of pollution for the benefit of estuary habitat may be considered, as long as it does not meet the definition of excluded activities under the Act (*see* section III, Excluded Activities, below).

In general, proposed projects should clearly demonstrate anticipated benefits to habitats such as those habitats listed in the Introduction. Although the Council recognizes that water quality and land use issues may impact habitat restoration efforts and must be considered in project planning, the Estuary Habitat Restoration Program is intended to fund physical habitat restoration projects, not measures such as storm water detention ponds,

wastewater treatment plant upgrades or combined sewer outfall improvements.

## III. Excluded Activities

Estuary Habitat Restoration Program funds will not be used for any activity that constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law, or that constitutes restoration for natural resource damages required under any Federal or State law. Estuary Habitat Restoration Program funds will not be used for remediation of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675). Additionally, Estuary Habitat Restoration Program funds will not be used to carry out projects on Federal lands or to fund educational or recreational facilities.

## IV. Project Sponsor and Cost Sharing

The Non-Federal Sponsor may be a State, a political subdivision of a State, a Tribe, or a regional or interstate agency. A non-governmental organization may serve as a Non-Federal Sponsor as determined by the Secretary of the Army (Secretary) in consultation with appropriate State and local governmental agencies and Tribes. For purposes of this act the term non-governmental organization does not include for profit enterprises. The Non-Federal Sponsor must be able to provide the real estate interests necessary for implementation, operation, maintenance, repair, rehabilitation and replacement of the project. In most cases this means the Non-Federal Sponsor must have fee title to the lands necessary for the project although in some cases an easement may be sufficient.

The Federal share of the cost of an estuary habitat restoration project shall not exceed 65 percent except that the Federal share shall be 85 percent of the incremental additional cost of pilot testing or demonstration of an innovative technology or approach having the potential for improved cost-effectiveness. Innovative technology or approach are defined as novel processes, techniques and/or materials to restore habitat, or the use of existing processes, techniques, and/or materials in a new restoration application.

Prior to initiation of a project, the Non-Federal Sponsor must enter into a written agreement with the funding agency in which the Non-Federal Sponsor agrees to provide its share of the project cost; including necessary lands, easements, rights-of-way, and

relocations and long-term maintenance. The value of the required real estate interests will be credited towards the Non-Federal Sponsor's share of the project cost. The Non-Federal Sponsor may also provide services and in-kind contributions for credit toward its share of the project cost, including cost shared monitoring. Adaptive management will be a non-Federal responsibility; it will not be cost shared. Credit for the value of in-kind contributions is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including but not limited to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (40 U.S.C. 276c). Credit may be afforded for the value of required work undertaken by volunteers, using the hourly value in common usage for grants programs but not to exceed the Federal estimate of the cost of activity. The Non-Federal Sponsor shall also have a long-term responsibility for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating these projects. The cost of these activities will not be included in the total project cost and will not count toward the Non-Federal Sponsor's minimum 35 percent share of the project cost.

Other Federal funds, *i.e.*, funds appropriated to agencies other than the agency signing the cost-share agreement, may not be used by the Non-Federal Sponsor to meet its share of the project cost unless the other Federal agency verifies in writing that expenditure of funds for such purpose is expressly authorized by statute. Otherwise, other Federal funds may be used for the proposed project if consistent with the other agency's authorities and will count as part of the Federal share of the project cost. Any non-Federal funds or contributions used as a match for these other Federal funds may be used toward the project but will not be considered in determining the non-Federal share in relation to the Federal share of the costs.

Credit will be provided only for work necessary for the specific project being funded with Estuary Habitat Restoration Program funds. For example, a non-Federal entity is engaged in the removal of ten dams, has removed six dams, and now seeks assistance for the removal of the remaining four dams as an Estuary Habitat Restoration Program project. None of the costs associated with the removal of the six dams is creditable as part of the non-Federal share of the project for removal of four dams.

The Corps will not transfer funds to the Non-Federal Sponsor unless the

project meets the conditions for implementation under a cooperative agreement. If a Corps cost-share agreement is required, the Corps will implement (construct) some portion of the proposed project and be responsible for managing construction activities not performed by the Non-Federal Sponsor as in-kind contribution. Projects funded by the other Council agencies will be implemented using a cooperative agreement. In all cases the funding agencies will use the planning, evaluation, and design products provided by the applicant to the extent possible. The Federal funding agency will be responsible for assuring compliance with Federal environmental statutes, assuring the project is designed to avoid adverse impacts on other properties and that the project can reasonably be expected to provide the desired benefits. Corps activities related to implementation of projects under this authority will be part of the Federal cost of the project, and the Non-Federal Sponsor should consider these costs in developing the project cost estimate. The Non-Federal Sponsor should coordinate with the appropriate Corps district office during preparation of the proposal to obtain an estimate of the funds required and other available information which may improve the proposal. Information on district locations and boundaries may be found at <http://www.usace.army.mil/about/Pages/Locations.aspx>. If additional assistance is required please contact Ms. Cummings (see **FOR FURTHER INFORMATION CONTACT** section).

#### V. Funding Availability

Limited funds have been appropriated for implementation of projects under the Estuary Habitat Restoration Program. The Council will not accept proposals that indicate an estimated Federal cost of less than \$100,000 or more than \$1,500,000. There is no guarantee that sufficient funds will be available to fund all eligible proposals. The number of proposals funded as a result of this notice will depend on the number of eligible proposals received, the estimated amount of funds required for each selected project, and the merit and ranking of the proposals. The exact amount of the Federal and non-Federal cost share for each selected project will be specified in the written agreement discussed in Project Sponsor and Cost Sharing, Section IV above. Projects selected for funding must be capable of producing the ecosystem benefits described in the proposal in the absence of Federal funding beyond that established in the cost-share or cooperative agreement.

#### VI. Proposal Review Process

Proposals will be screened as discussed in section VII. A. below to determine eligibility. The staff of the agencies represented on the Council will conduct a technical review of the eligible proposals in accordance with the criteria described in section VII. B. below. Agency scientists involved in estuarine research or the development and application of innovative methods for restoring estuary habitats will also review proposals that indicate the use of innovative technologies or approaches. Each agency will score and rank the proposals; the staff of the five agencies will use these rankings as the basis for a consolidated recommendation. The staff will also recommend which agency should fund a project if agencies other than the Corps have funds for this program. The Council will consider the staff recommendation, the items discussed in sections VII. C. and D. below, and possibly other factors when preparing its prioritized list of recommended projects for the Secretary's use.

#### VII. Proposal Review Criteria

This section describes the criteria that will be used to review and select projects to be recommended to the Secretary for funding under the Act. It will benefit applicants to ensure that project proposals clearly address the criteria set forth under the following four subsections: Initial Screening of Project Proposals; Evaluation of Project Proposals; Priority Elements; and Other Factors.

##### A. Initial Screening of Project Proposals

Proposals will be screened according to the requirements listed in sections 104(b) and 104(c)(2) of the Act as described below. Proposed projects must not include excluded activities as discussed in Section III above. Additionally, the letter of assurance must indicate that the primary property owner and the party responsible for long-term maintenance have reviewed and support the proposal. Proposals that do not meet all of these initial screening criteria will not be evaluated further. To be accepted the proposal must:

- (1) Originate from a Non-Federal Sponsor (section 104(b));
- (2) address restoration needs identified in an estuary habitat restoration plan (section 104 (c)(2)(A)). The Act defines "estuary habitat restoration plan" as any Federal, State, or regional plan for restoration of degraded estuary habitat that was developed with substantial participation of the public. (section 103(6));

(3) be consistent with the Estuary Habitat Restoration Strategy (section 104(c)(2)(B)) by:

- (a) Including eligible restoration activities that provide ecosystem benefits;
- (b) addressing estuary habitat trends (including historic losses) in the project region, and indicating how these were considered in developing the project proposal;
- (c) involving a partnership approach, and
- (d) clearly describing the benefits expected to be realized by the proposed project;

(4) include a monitoring plan that is consistent with standards developed by NOAA under section 104 (c)(2)(C). The standards are available at: [http://www.usace.army.mil/CECW/ERA/Pages/monitor\\_db.aspx](http://www.usace.army.mil/CECW/ERA/Pages/monitor_db.aspx) and [http://era.noaa.gov/htmls/era/era\\_monitoring.html](http://era.noaa.gov/htmls/era/era_monitoring.html), or from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Minimum monitoring requirements include monitoring over a period of five years post-construction and tracking of at least one structural and one functional element. Examples of structural and functional elements are contained in the monitoring document cited above, and;

(5) include satisfactory assurances that the Non-Federal Sponsor has adequate authority and resources to carry out items of local cooperation and properly maintain the project (section 104 (c)(2)(D)).

##### B. Evaluation of Project Proposals

Proposals that meet the initial screening criteria in A. above will be eligible for further review using the criteria listed below. The following criteria are listed in order of relative importance with the most important criteria first. The first four criteria are critical. If the reviewers find that a response to any of the first four criteria is completely inadequate, the proposal will be rejected. For each of the listed criteria the focus will be on the factors mentioned below but other factors may also be considered.

##### (1) Ecosystem Benefits

Proposals will be evaluated based on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. Following are specific factors that reviewers will consider as part of this criterion:

- (a) Prevention or reversal of estuary habitat loss or degradation in the project area and the nature and extent of the proposed project's potential

contribution to the long-term conservation of estuary habitat function,

(b) benefits for Federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species or designated or proposed critical habitat in the project area,

(c) extent to which the project will provide, restore, or improve habitat important for estuary-dependent fish and/or migratory birds (*e.g.* breeding, spawning, nursery, foraging, or staging habitat),

(d) prevention or reduction of nonpoint source pollution or other contaminants to estuary habitats or restoration of estuary habitats that are already contaminated, and

(e) benefits to nearby existing habitat areas, or contribution to the creation of wildlife/ecological corridors connecting existing habitat areas.

Examples of activities that would not qualify would be restoration of an oyster bed open to commercial harvest or a fish hatchery. Educational facilities such as classrooms, botanical gardens, or recreational facilities such as trails or boat ramps would also not qualify for cost sharing under this program although they may be included in the project if they do not conflict with the environmental benefits expected from project implementation.

## (2) Cost-Effectiveness

Reviewers will evaluate the relationship between estimated project costs, including the costs of remaining planning, design, construction, required lands, and annual operation, maintenance, repair, rehabilitation and replacement, and monitoring cost, to the monetary and non-monetary benefits described in the proposal. Clear quantitative and qualitative descriptions of the proposed outputs will facilitate this evaluation. Examples of units of measure include: Acres restored, flood damage reduction levels, changes in water quality parameters, increases in the productivity of various species, and presence and absence of certain species. The estimated persistence of the proposed project outputs through time will be considered. For example, will the area be maintained as a wetland, or allowed to erode or become upland? Or is there a possibility the project will be impaired within the next fifty years from rising sea levels? Will the proposed project produce additional benefits due to synergy between the proposed project and other ongoing or proposed projects? Reviewers will consider if the proposed project is a cost-effective way to achieve the proposed benefits. In some instances the

costs and benefits of proposed projects may be compared to the costs and benefits of other similar projects in the area. The significance of the proposed outputs is also a factor to be considered as part of cost-effectiveness. The significance of restoration outputs should be recognized in terms of institutional (such as laws, adopted plans, or policy statements), public (such as support for the project), or technical (such as if it addresses scarcity, increases limiting habitat, or improves or increases biodiversity) importance.

## (3) Technical Feasibility

Reviewers will evaluate the extent to which, given current and projected environmental conditions of the restoration site—*e.g.*, soils, flood regime, presence of invasive species, surrounding land use—the proposed project is likely to be successfully implemented. Consideration will also be given to:

(a) Potential success of restoration techniques, based on a history of successful implementation in field or pilot projects,

(b) implementation schedule,

(c) expected length of time before success can be demonstrated,

(d) proposed corrective actions using monitoring information,

(e) project management plans, and

(f) experience and qualifications of project personnel.

## (4) Scientific Merit

Reviewers will evaluate the extent to which the project design is based on sound ecological principles and is likely to meet project goals. This may be indicated by the following factors:

(a) Goals of the project are reasonable considering the existing and former habitat types present at the site and other local influences,

(b) the proposed restoration methodology demonstrates an understanding of habitat function, and

(c) specific methods proposed (if successfully implemented—see criteria on technical feasibility) have a good chance of meeting project goals and achieving long-term sustainability.

## (5) Agency Coordination

Reviewers will evaluate the degree to which the project will encourage increased coordination and cooperation among Federal, State, and local government agencies. Some of the indicators used to evaluate coordination are:

(a) The State, Federal, and local agencies involved in developing the project and their expected roles in implementation,

(b) the nature of agency coordination, *e.g.*, joint funding, periodic multi-agency review of the project, collaboration on adaptive management decisions, joint monitoring, opportunities for future collaboration, etc., and

(c) whether a formal agreement, such as a Memorandum of Understanding (MOU), exists between/among agencies as part of the project.

## (6) Public/Private Partnerships

One of the focuses of the Act is the encouragement of new public/private partnerships. Reviewers will evaluate the degree to which the project will foster public/private partnerships and uses Federal resources to encourage increased private sector involvement. Indicators of the success at meeting this criterion follow. How will the project promote collaboration or create partnerships among public and private entities, including potential for future new or expanded public/private partnerships? What mechanisms are being used to establish the partnership, *e.g.*, joint funding, shared monitoring, joint decision-making on adaptive management strategies? Is there a formal agreement, such as a Memorandum of Understanding, between/among the partners as part of the project? Also important is the extent to which the project creates an opportunity for long-term partnerships among public and private entities.

## (7) Level of Contribution

Reviewers will consider the level and type (cash or in-kind) of Non-Federal Sponsor's contribution. Providing more than the minimum 35-percent share will be rated favorably. It must be clear how much of the total project cost the Estuary Habitat Restoration Program is expected to provide, how much is coming from other Federal sources, how much is coming directly from the sponsor, and how much is available or expected to be provided by other sources (either cash or in-kind). Preference may be given to projects with the majority of the funding confirmed.

## (8) Monitoring Plan

Reviewers will consider the following factors in evaluating the quality of the monitoring plan:

(a) Linkage between the monitoring methods and the project goals, including success criteria,

(b) how results will be evaluated (statistical comparison to baseline or reference condition, trend analysis, or other quantitative or qualitative approach),

(c) how baseline conditions will be established for the parameters to be measured,

(d) if applicable, the use and selection of reference sites, where they are located, how they were chosen, and whether they represent target conditions for the habitat or conditions at the site without restoration,

(e) the appropriateness of the nature, frequency, and timing of measurements and which areas will be sampled,

(f) provisions for adaptive management, and data reporting, and

(g) whether the length of the proposed monitoring plan is appropriate for the project goals. The minimum required monitoring period is five years post construction.

#### (9) Multiple Benefits

In addition to the ecosystem benefits discussed in criterion (1) above, restored estuary habitats may provide additional benefits. Among those the reviewers will consider are: flood damage reduction, protection from storm surge, water quality and/or quantity for human uses, recreational opportunities, and benefits to commercial fisheries.

#### (10) Supports Regional Restoration Goals

Reviewers will evaluate the extent to which the proposed project contributes to meeting and/or strengthening the needs, goals, objectives and restoration priorities contained in regional restoration plans, and the means that will be used to measure such progress.

#### (11) Part of a Federal or State Plan

If the proposed project is part of a Federal (examples of Federal plans are listed in section 103(6)(B) of the Act) or State plan, reviewers will consider the extent to which the project would contribute to meeting and/or strengthening the plan's needs, goals, objectives and restoration priorities, and the means that will be used to measure such progress.

#### C. Priority Elements

Section 104(c)(4) of the Act directs the Secretary to give priority consideration to a project that merits selection based on the above criteria if it:

(1) Occurs within a watershed where there is a program being implemented that addresses sources of pollution and other activities that otherwise would adversely affect the restored habitat; or

(2) includes pilot testing or demonstration of an innovative technology or approach having the potential to achieve better restoration results than other technologies in current practice, or comparable results

at lower cost in terms of energy, economics, or environmental impacts.

The Council will also consider these priority elements in ranking proposals.

#### D. Other Factors

In addition to considering the composite ratings developed in the evaluation process and the priority elements listed in C. above, the Council will consider other factors when preparing its prioritized list for the Secretary's use. These factors include (but may not be limited to) the following:

(1) Readiness of the project for implementation. Among the factors to be considered when evaluating readiness are the steps that must be taken prior to project implementation, for example is the project a concept, a detailed plan, or completed design; potential delays to project implementation; and the status of real estate acquisition. Proposed projects that have completed more of the pre-construction activities will generally receive more favorable consideration.

(2) Balance between large and small projects, to the extent possible given the program funding constraints.

(3) Geographic distribution of the projects.

#### VIII. Project Selection and Notification

The Secretary will select projects for funding from the Council's prioritized list of recommended projects after considering the criteria contained in section 104(c) of the Act, availability of funds and any reasonable additional factors. It is expected that the Secretary will select proposals for implementation approximately 100 days after the close of this solicitation or 30 days after receiving the list from the Council, whichever is later. The Secretary will also recommend the lead Federal agency for each project to be funded. The Non-Federal Sponsor of each proposal will be notified of its status at the conclusion of the selection process. Staff from the appropriate Federal agency will work with the Non-Federal Sponsor of each selected project to develop the cost-sharing agreements and schedules for project implementation.

#### IX. Project Application Form Clarifications

Most of the entries are relatively self-explanatory, however, based on experience some clarifying comments are provided to facilitate completion of the form.

A. Project name should be short but unique and descriptive.

B. Non-Federal Sponsor's Point(s) of Contact. One of the individual(s) listed

should be the person that can answer project specific questions and will be the day-to-day contact for the project. This may be a different individual than the individual signing the Non-Federal Sponsor's certification. That individual should have the legal authority to make the required commitments.

C. Item 8. Funding and Partners. Post-construction costs for adaptive management and long-term project maintenance do not count as a cost share for projects funded under the Estuary Restoration Act and should not be included in the estimated total project cost. In the budget table, list the share of the project cost being sought from the Estuary Habitat Restoration Program as ERA funds. Funds from other Federal programs such as NOAA's Community Based Restoration Program should be listed by agency and program. Also note whether the value of the contribution from non-Federal sources are cash or in-kind.

D. If submitting a proposal electronically, a hard copy of the Letter of Assurance and Certification may be submitted if it is post-marked by the closing date for this announcement and the electronic submission has the text of the Letter of Assurance and Certification with an indication of the date signed and name/title/organization of the individual signing these documents. The Letter of Assurance should be addressed to "Chairman, Estuary Habitat Restoration Council" and sent to the address in Section X for hard copy submittals.

E. In the project description section of the project application form the phrase "Estimated life cycle of the project" refers to the functional life of the project and might include discussion of phases such as x years to maturity, y years at peak performance and z years in a declining state. As an example a wetland may fill with sediment over time and its functionality diminish. The "life-cycle" would be the number of years until the project no longer provides the original benefits.

G. The proposed project should only be described as innovative if the Non-Federal Sponsor is requesting the special cost sharing for the incremental costs of including testing of or a demonstration of an innovative technology or approach as defined in the application form.

#### X. Application Process

Proposal application forms are available at <http://www.usace.army.mil/CECW/ERA/Pages/pps.aspx> or by contacting Ms. Ellen Cummings (see ADDRESSES and FOR FURTHER INFORMATION CONTACT sections). Project

proposals may be submitted electronically, by mail, or by courier. Electronic submissions are preferred. The application form has been approved by OMB in compliance with the Paperwork Reduction Act and is OMB No. 0710-0014 with an expiration date of November 30, 2011. Electronic submissions are encouraged and should be sent to [estuary.restoration@usace.army.mil](mailto:estuary.restoration@usace.army.mil). Multiple e-mail messages may be required to ensure successful receipt if the files exceed 5MB in size. Questions may also be sent to the same e-mail address. Hard copy submissions may be sent or delivered to HQUSACE, ATTN: CECW-PB, 7701 Telegraph Road #3D72, Alexandria, VA 22315-3860. The part of the nomination prepared to address the "proposal elements" portion of the application should be no more than twelve double-spaced pages, using a 10- or 12-point font. Paper copies should be printed on 8.5 in. x 11 in. paper and may be double sided but must not be bound as multiple copies will be necessary for review. Only one hard copy is required. A PC-compatible CD-ROM in either Microsoft Word or WordPerfect format may accompany the paper copy. Nominations for multiple projects submitted by the same applicant must be submitted in separate e-mail messages and/or envelopes.

**Brenda S. Bowen,**  
Army Federal Register Liaison Officer.  
[FR Doc. E9-5463 Filed 3-12-09; 8:45 am]  
BILLING CODE 3720-58-P

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.  
**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before May 12, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments should be sent to all of the following:  
[Information\\_Collection@hq.doe.gov](mailto:Information_Collection@hq.doe.gov).

Denise Clarke, Procurement Analyst,  
MA-612/L'Enfant Plaza Building,  
U.S. Department of Energy, 1000  
Independence Avenue, SW.,  
Washington, DC, 20585-1615,  
[deniset.clarke@hq.doe.gov](mailto:deniset.clarke@hq.doe.gov)

Ever Crutchfield, Business Analyst, IM-  
23/Germantown Building, U.S.  
Department of Energy 1000  
Independence Avenue, SW.,  
Washington, DC 20585-1290,  
[ever.crutchfield@hq.doe.gov](mailto:ever.crutchfield@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**  
Requests for additional information or copies of the information collection instrument and instructions should be directed to Denise Clarke at the above address, or by telephone at (202) 287-1748.

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1910-0400; (2) Information Collection Request Title: DOE Financial Assistance Information Clearance; (3) Type of Review: Continuation of Mandatory Information Collection under Paperwork Reduction Act; (4) Purpose: This information collection package covers collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) Respondents: 24,241; and (6) *Estimated Number of Burden Hours:* 239,458.

**Statutory Authority:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

Issued in Washington, DC on March 6, 2009.

**Edward R. Simpson,**

*Director, Office of Procurement and Assistance Management, Department of Energy.*

[FR Doc. E9-5462 Filed 3-12-09; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 5, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09-33-000.

*Applicants:* Windy Flats Partners, LLC.

*Description:* Notice of Self Certification of Exempt Wholesale Generator Status of Windy Flats Partners, LLC.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5075.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER00-3039-002.

*Applicants:* Exeter Energy Limited Partnership.

*Description:* Request for Category 1 Seller Status Classification Pursuant to Order 697 and 697-A; Exeter Energy Limited Partnership.

*Filed Date:* 03/04/2009.

*Accession Number:* 20090304-5141.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 25, 2009.

*Docket Numbers:* ER03-114-005; ER04-183-004.

*Applicants:* Great Bay Power Marketing, Inc.; Great Bay Hydro Corporation.

*Description:* Updated version of Great Bay Power Marketing's Application for qualification as Category I Seller.

*Filed Date:* 02/24/2009.

*Accession Number:* 20090224-5100.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 17, 2009.

*Docket Numbers:* ER06-864-012; ER00-2885-019; ER01-2765-018; ER02-1582-016; ER02-2102-018; ER03-1283-013; ER05-1232-011; ER06-1543-009; ER07-1112-003; ER07-1113-003; ER07-1115-003; ER07-1116-003; ER07-1117-003;

ER07-1118-003; ER07-1119-003;  
ER07-1120-003; ER07-1122-003;  
ER07-1356-004; ER07-1358-004;  
ER08-148-003.

*Applicants:* Bear Energy LP; Cedar Brakes I, L.L.C.; Cedar Brakes II, LLC; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Vineland Energy LLC; J.P. Morgan Ventures Energy Corporation; Brush Cogeneration Partners; BE Allegheny LLC; BE CA LLC; BE Colquitt LLC; BE Ironwood LLC; BE KJ LLC; BE Rayle LLC; BE Red Oak LLC; BE Satilla LLC; BE Walton LLC; BE Alabama LLC; BE Louisiana LLC; Central Power & Lime Inc.

*Description:* JP Morgan Chase Companies submits response to a recent request from Commission Staff re the updated market power analysis that was submitted on 6/30/08.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090305-0166.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 13, 2009.

*Docket Numbers:* ER08-1410-002.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits Second Revised Rate Schedule FERC 262 filed on 12/15/08 in compliance with Order 614.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090303-0234.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09-409-001.

*Applicants:* WestConnect.

*Description:* WestConnect submits a compliance filing in response to Order on Point-to-Point Regional Transmission Service Experiment.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090302-0032.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 18, 2009.

*Docket Numbers:* ER09-430-001.

*Applicants:* Willow Creek Energy LLC.

*Description:* Willow Creek Energy LLC submits notice of non material changes in facts from those relied upon to grant market based rate authority to Willow Creek.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090304-0148.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-633-001.

*Applicants:* SWG Colorado, LLC.

*Description:* SWG Colorado, LLC submits a Substitute First Revised Sheet 1 and Sub. First Revised Sheet 2 and withdraws Original Sheet 3 under ER09-633.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090305-0002.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09-711-001.

*Applicants:* Freeport-McMoRan

Copper & Gold Energy Se.

*Description:* Phelps Dodge Energy Services, LLC submits amendment to the notice of succession.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090304-0147.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-733-000.

*Applicants:* Grindstone Capital

Management, LLC.

*Description:* Grindstone Capital Management, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

*Filed Date:* 02/24/2009.

*Accession Number:* 20090225-0214.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 17, 2009.

*Docket Numbers:* ER09-750-000.

*Applicants:* Windy Flats Partners, LLC.

*Description:* Windy Flats Partners, LLC submits application for order accepting market based rate tariff and granting waivers and blanket authority.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0208.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-762-000.

*Applicants:* Power Resources, Ltd.

*Description:* Power Resources, Ltd petitions for authority to sell power at market based rates, acceptance of initial rate schedule, waivers, and blanket authority.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0154.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-769-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submit revisions to provisions of their Open Access Transmission Energy and Operating Reserve Markets Tariff re Stored Energy Resources etc.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090302-0041.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 18, 2009.

*Docket Numbers:* ER09-770-000.

*Applicants:* Xcel Energy Operating Companies.

*Description:* Southwestern Public Service Co submits a form of Service Agreement as a new Attachment S to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090302-0019.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 18, 2009.

*Docket Numbers:* ER09-778-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff to amend several provisions of its executed External Market Advisor Services Agreement with Boston Pacific Co, Inc, effective 1/1/09.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302-0037.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-779-000.

*Applicants:* Nordic Energy Services, LLC.

*Description:* Nordic Energy Services, LLC submits the Petition for Acceptance for Initial Tariff Waivers and Blanket authority.

*Filed Date:* 03/04/2009.

*Accession Number:* 20090305-0001.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 25, 2009.

*Docket Numbers:* ER09-780-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits Third Revised Sheet No 9 of a Control Area Services Agreement between Westar, etc.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0203.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-781-000.

*Applicants:* Otter Tail Power Company.

*Description:* Otter Tail Power Company submits revisions to its Control Area Services and Operation Tariff Area.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0204.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-782-000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc submits an executed Rate Schedule providing for cost based power sales for partial requirements service to the city of Jasper, Texas.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0205.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-783-000.

*Applicants:* Southern Indiana Gas & Electric Company.

*Description:* Southern Indiana Gas & Electric Company submits revised tariff sheets for Vectren's Attachment O and tariff sheets for Vectren's proposed Attachment GG in the Midwest ISO's Open Access Transmission and Energy Market Tariff.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0206.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09–784–000.  
*Applicants:* Wisconsin Public Service Corporation.

*Description:* Wisconsin Public Service Corporation submits revised Sheets 21, 23, and 24 to Attachment A to WPSC's Rate Schedule 74.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0207.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09–785–000.  
*Applicants:* Midwest ISO Transmission Owners.

*Description:* Midwest Independent Transmission System Operator, Inc and certain Midwest ISO Transmission Owners submit revisions to Attachment GG of the Midwest ISO Tariff.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0155.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09–786–000.  
*Applicants:* Consolidated Edison Company of New York.

*Description:* Consolidated Edison Company of New York, Inc submits their Accommodation Services Tariff, FERC Electric Tariff, Original Volume No 4, effective 5/4/09.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090304–0118.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09–787–000.  
*Applicants:* EON US LLC.

*Description:* EON US, LLC submits amended unexecuted Network Integration Transmission Service Agreement *et al.*

*Filed Date:* 03/03/2009.

*Accession Number:* 20090304–0119.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09–788–000.  
*Applicants:* Midwest Independent System Transmission.

*Description:* Midwest Independent Transmission System Operator, Inc. submits revisions to Section 7.14 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0120.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–789–000.  
*Applicants:* PJM Interconnection L.L.C.

*Description:* PJM Interconnection, LLC submits revisions to Section 3.2.2 of Schedule 1 of the Amended and Restated Operating Agreement, etc.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0121.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–790–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits executed Service Agreement for Network Integration Transmission Service between SPP as Transmission Provider and Empire District Electric Company as Network Customer, etc.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090304–0122.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09–791–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits revised pages to its Open Access Transmission Tariff.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090304–0123.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09–792–000.  
*Applicants:* American Electric Power Service Corporation.

*Description:* AEP Texas Central Co. submits new and revised sheets of the transmission interconnection agreement with Electric Transmission Texas, LLC.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0124.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–793–000.  
*Applicants:* American Electric Power Service Corporation.

*Description:* AEP Texas Central Company submits an executed generation interconnection agreement dated 2/13/09 with Langford Wind Power, LLC.

*Filed Date:* 03/03/2009.

*Accession Number:* 20090304–0125.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 24, 2009.

*Docket Numbers:* ER09–794–000.  
*Applicants:* Ameren Services Company.

*Description:* Illinois Power Company submits Notice of Cancellation for First Revised Interconnection and Operating Agreement between Illinois Power Company and Corn Belt Generation Cooperative Agreement.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0126.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–795–000.  
*Applicants:* American Electric Power Service Corporation.

*Description:* AEP Operating Companies requests acceptance of an Interconnection and Local Delivery Service Agreement with the City of Danville.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0127.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–796–000.  
*Applicants:* Consolidated Edison Company of New York.

*Description:* Consolidated Edison Company of New York, Inc submits First Revised Sheet 13B to FERC Electric Tariff, First Revised Rate Schedule 96 with the New York Public Service Commission.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0128.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09–797–000.  
*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits revisions to their Emergency Load Response Program found in Schedule 1 of the Amended and Restated Operating Agreement etc.

*Filed Date:* 03/04/2009.

*Accession Number:* 20090305–0080.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07–35–003.

*Applicants:* Cleco Power LLC.

*Description:* Cleco Power LLC submits its Operational Penalties Annual Compliance Report.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090304–0158.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.



The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. E9-5465 Filed 3-12-09; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 3, 2009.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09-58-000.

*Applicants:* Evergreen Wind Power V, LLC, First Wind Holdings, LLC, Evergreen Wind Power III, LLC, Stetson Wind II, LLC, Evergreen Gen Lead, LLC.

*Description:* Application of First Wind Holdings, LLC, *et al.* for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment and Expedited Consideration.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090226-5124.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG09-33-000.

*Applicants:* Windy Flats Partners, LLC.

*Description:* Notice of Self Certification of Exempt Wholesale Generator Status of Windy Flats Partners, LLC.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5075.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER03-1284-005;

ER05-1202-005; ER05-1262-019;

ER06-1093-015; ER06-1122-004;

ER07-342-003; ER07-407-004; ER07-

522-004; ER08-1111-002; ER08-1225-

002; ER08-1226-002; ER08-1227-001;

ER08-1228-001;

*Applicants:* High Trail Wind Farm, LLC, Blue Canyon Windpower II LLC, Old Trail Wind Farm, LLC, Telocaset Wind Power Partners, LLC, High Prairie Wind Farm II, LLC, Cloud County Wind Farm, LLC, Pioneer Prairie Wind Farm I, LLC, Arlington Wind Power Project LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Rail Splitter Wind Farm, LLC, Blue Canyon Windpower LLC, Wheat Field Wind Power Project LLC.

*Description:* Notice of Non-Material Change in Status of Arlington Wind Power Project LLC, *et al.*

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5204.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER06-864-012;

ER07-1356-004; ER07-1112-000;

ER07-1113-000; ER07-1115-000;

ER07-1116-000; ER07-1117-000;

ER07-1119-003; ER07-1120-003;

ER07-1358-004; ER07-1118-003;

ER07-1122-003; ER06-1543-009;

ER00-2885-019; ER01-2765-018;

ER08-148-003; ER05-1232-011; ER02-

1582-016; ER02-2102-018; ER03-1283-013.

*Applicants:* Bear Energy LP; BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Coloquitt LLC; BE Ironwood LLC; BE KJ LLC; BE Red Oak LLC; BE Satilla LLC; BE Louisiana LLC; BE Rayle LLC; BE Walton LLC; Brush Cogeneration Partners; Cedar Brakes I, L.L.C.; Cedar Brakes II, LLC; Central Power & Lime Inc.; J.P. Morgan Ventures Energy Corporation; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Vineland Energy LLC.

*Description:* JP Morgan Companies submits supplemental information to 6/30/08 Updated Market Power Analysis.

*Filed Date:* 02/20/2009.

*Accession Number:* 20090224-0032.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 13, 2009.

*Docket Numbers:* ER08-1583-001.

*Applicants:* Tuolumne Wind Project, LLC.

*Description:* Notice of Non-Material Change in Status re Tuolumne Wind Project, LLC.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5187.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09-214-002.

*Applicants:* Mt. Carmel Cogen, Inc.

*Description:* Refund Report of Mt. Carmel Cogen, Inc.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5201.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09-621-001.

*Applicants:* TAQA Gen X LLC.

*Description:* TAQA Gen X, LLC submits Substitute Original Sheet 1 to the adopted tariff to amend the reference to the Commission's regulations re seller category.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0030.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-665-000.

*Applicants:* Wellhead Power eXchange, LLC.

*Description:* Wellhead Power eXchange, LLC submits the supplemental information set forth regarding WPX's proposed market-based rate tariff entitled FERC Electric Tariff 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0163.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* ER09-771-003.

*Applicants:* E.ON U.S. LLC.

*Description:* True-Up Filing of E.ON U.S. LLC.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302-5184.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 23, 2009.

*Docket Numbers:* ER09-772-000.

*Applicants:* Highland Energy, LLC.

*Description:* Highland Energy, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume 1.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0031.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-773-000.

*Applicants:* Cantor Fitzgerald Brokerage, L.P.,

*Description:* CantorCO2c, LP submits notice of cancellation of its market-based rate tariff.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0029.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-774-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits an executed Amended and Restates Large Generator Interconnection Agreement with Hoosier Wind Project, LLC *et al.*

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0033.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-775-000.

*Applicants:* TexRep2 LLC.

*Description:* TexRep2, LLC seeks to cancel its FEC Electric Tariff, Original Volume 1 and requests a shortened comment period.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0035.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-776-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits the Balancing Area Services Agreement with City of Springfield, Missouri.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0034.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-777-000.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Co. submits revised rate sheets to their Interconnection Facilities Agreement with City of Corona, etc.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090302-0036.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 19, 2009.

*Docket Numbers:* ER09-778-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff to amend several provisions of its executed External Market Advisor Services Agreement with Boston Pacific Co, Inc, effective 1/1/09.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302-0037.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

*Docket Numbers:* ER09-780-000.

*Applicants:* Westar Energy, Inc.

*Description:* Westar Energy, Inc submits Third Revised Sheet No 9 of a Control Area Services Agreement between Westar, etc.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303-0203.

*Comment Date:* 5 p.m. Eastern Time on Friday, March 20, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9-5466 Filed 3-12-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL09-38-000]

#### Notice of Complaint

March 6, 2009.

**California Municipal Utilities Association; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; City and County of San Francisco; Northern California Power Agency; Sacramento Municipal Utility District; Modesto Irrigation District; Transmission Agency of Northern California, Complainants v. California Independent System Operator Corporation, Respondent**

Take notice that on March 4, 2009, the California Municipal Utilities Association, (CMUA) on behalf of itself and its members, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (the Six Cities); the City and County of San Francisco (CCSF); the Northern California Power Agency (NCPA); the Sacramento Municipal Utility District (SMUD); the Modesto Irrigation District (MID); and the Transmission Agency of Northern California (TANC), filed a formal complaint against the California Independent System Operator Corporation (CASIO), pursuant to sections 206, 306 and 309 of the Federal Power Act and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, alleging that the absence of Tariff provisions to protect Market Participants against charges incurred upon implementation of the Market Redesign and Technology Upgrade Tariff that are dramatically in excess of those levied during prior historic periods is unjust and unreasonable in violation of the Federal Power Act.

Complainants certify that copies of the complaint were served on the contacts for the CASIO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date.

The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 16, 2009.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-5429 Filed 3-12-09; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2232-522; North Carolina and South Carolina]

#### Duke Power Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Catawba-Wateree Hydroelectric Project and Intent To Hold Public Meetings

March 6, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license for the Catawba-Wateree Hydroelectric Project (FERC No. 2232), located on the Catawba River in the counties of Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln, and Gaston in North Carolina, and the counties of York, Lancaster, Chester, Fairfield, and Kershaw in South Carolina, and has prepared a Draft Environmental Impact Statement (draft EIS) for the project.

The draft EIS contains staff evaluations of the applicant's proposal and the alternatives for relicensing the Catawba-Wateree Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Commission's Web site at <http://www.ferc.gov> under the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. All comments must be filed by May 8, 2009, and should reference Project No. 2232-522. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at <http://www.ferc.gov> under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.<sup>1</sup> You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend one, or both, of two public meetings that will be held to receive comments on the draft EIS. The time and location of the meetings will be announced in a subsequent notice.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Commission's public record for the project. This meeting is posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

For further information, contact Sean Murphy at (202) 502-6145 or at [sean.murphy@ferc.gov](mailto:sean.murphy@ferc.gov).

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E9-5431 Filed 3-12-09; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 733-010 Colorado]

#### Eric Jacobson; Notice of Availability of Environmental Assessment

March 6, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the existing Ouray Hydroelectric Project, located on the Uncompahgre River in Ouray County, Colorado, and has prepared an Environmental Assessment (EA) for the project. The project currently occupies 4.38 acres of federal lands in the Uncompahgre National Forest managed by the U.S. Forest Service.

The EA contains Commission staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Any comments on this EA should be filed within 30 days of the date of this notice and should be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please affix Project No. 733–010 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site <http://www.ferc.gov>) under the “e-Filing” link.

Procedural schedule: Please note that the license application for this project will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
FERC issues single environmental assessment (EA) .....	March 6, 2009.
All stakeholders: EA comments due .....	April 6, 2009.
All stakeholders: modified terms and conditions due .....	June 5, 2009.

For further information, contact Steve Hocking at (202) 502–8753 or [steve.hocking@ferc.gov](mailto:steve.hocking@ferc.gov).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5432 Filed 3–12–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL09–37–000]

#### Arkansas Public Service Commission; Notice of Filing

March 6, 2009.

Take notice that on February 3, 2009, pursuant to section 292.402 of the Commission's regulations, the Arkansas Public Service Commission filed on behalf of the Arkansas Electric Cooperative Corp. (AECC) a Petition for Partial Waiver of certain obligations imposed on AECC and the Members under Sections 292.303(a) and 292.303(b) of the Code of Federal Regulations<sup>1</sup> implementing section 210 of the Public Utility Regulatory Policies Act of 1978, as amended.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the

comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on April 6, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5433 Filed 3–12–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Filing

March 6, 2009.

BC Landfill Energy, LLC .... ER09–503–000  
AC Landfill Energy, LLC .... ER09–504–000  
WC Landfill Energy, LLC ... ER09–505–000

Take notice that, on March 5, 2009, BC Landfill Energy, LLC, AC Landfill Energy, LLC, and WC Landfill Energy,

LLC filed an amendment to their January 7, 2009 applications for market-based rate authority in the above-captioned dockets, pursuant to the Commissions' request. Such filing serves to reset the filing dates in these proceedings.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

<sup>1</sup> 18 CFR 292.303(a) and 292.303(b) (2008).

*Comment Date:* 5 p.m. Eastern Time on March 16, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-5430 Filed 3-12-09; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RD09-3-000]

#### North American Electric Reliability Corporation; Notice of Filing

March 6, 2009.

Take notice that on February 27, 2009, pursuant to section 215(d) (1) of the Federal Power Act and Part 39.5 of the Federal Energy Regulatory Commission's (Commission) regulations, the North American Electric Reliability Corporation filed a petition seeking approval for Violation Severity Levels associated with Reliability Standard TOP-004-2—Transmission Operations that was approved by the Letter Order of the Commission on January 22, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on March 20, 2009.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. E9-5428 Filed 3-12-09; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-RCRA-2008-0911, FRL-8780-9]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Notification of Regulated Waste Activity (Renewal), EPA ICR Number 0261.16, OMB Control Number 2050-0028

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before May 12, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2008-0911, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov).
- *Fax:* 202-566-9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-RCRA-2008-0911. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Toshia King, Office of Solid Waste, mailcode 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703-308-7033; *fax number:* 703-308-8617; *e-mail address:* [king.toshia@epa.gov](mailto:king.toshia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-RCRA-2008-0911, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone

number for RCRA Docket is (202) 566-0270.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

#### What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

#### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- 1. Explain your views as clearly as possible and provide specific examples.
- 2. Describe any assumptions that you used.
- 3. Provide copies of any technical information and/or data you used that support your views.
- 4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- 5. Offer alternative ways to improve the collection activity.
- 6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### What Information Collection Activity or ICR Does This Apply to?

*Affected entities:* Entities potentially affected by this action are business or other for-profit as well as State, Local, or Tribal governments.

*Title:* Notification of Regulated Waste Activity (Renewal).

*ICR numbers:* EPA ICR No. 0261.16, OMB Control No. 2050-0028.

*ICR status:* This ICR is currently scheduled to expire on June 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilities are required to use the Notification Form (EPA Form 8700-12) to notify EPA of their hazardous waste activities. EPA needs this information to determine the universe of persons who generate, handle, and manage these regulated wastes; assign EPA Identification Numbers; and ensure that these regulated wastes are managed in a way that protects human health and the environment, as required by RCRA, as amended.

EPA enters notification information submitted by respondents into the EPA National data base and assigns EPA Identification Numbers. EPA uses the information primarily for tracking purposes, and secondarily for a variety of enforcement and inspection purposes. In addition, EPA uses this information to identify the universe of regulated waste generators, handlers, and managers and their specific

regulated waste activities. Finally, EPA uses this information to ensure that regulated waste is managed properly, that statutory provisions are upheld, and that regulations are adhered to by facility owners or operators.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, both contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the Notification of Regulated Waste Activity. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response for the initial notification, and 1 hour per response for any subsequent notifications. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 55,915.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 100,307 hours.

*Estimated total annual costs:* \$9,690,000, includes \$0 annualized capital costs and \$235,000 annualized O&M costs and \$9,455,000 annual labor costs.

#### What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will

then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 5, 2009.

**James R. Berlow,**

*Acting Director, Office of Resource Conservation and Recovery.*

[FR Doc. E9-5529 Filed 3-12-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8781-8]

### Agency Information Collection Activities OMB Responses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

**FOR FURTHER INFORMATION CONTACT:** Rick Westlund (202) 566-1682, or e-mail at [westlund.rick@epa.gov](mailto:westlund.rick@epa.gov) and please refer to the appropriate EPA Information Collection Request (ICR) Number.

#### SUPPLEMENTARY INFORMATION:

### OMB Responses to Agency Clearance Requests

#### OMB Approvals

EPA ICR Number 2291.01; Coalbed Methane Extraction Sector Survey; in 40 CFR part 435; was approved 02/18/2009; OMB Number 2040-0279; expires 02/29/2012.

EPA ICR Number 2152.03; Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter and Ozone (Renewal); in 40 CFR part 96; was approved 02/24/2009; OMB Number 2060-0570; expires 02/29/2012.

EPA ICR Number 0801.16; Requirements for Generators, Transporters, and Waste Management

Facilities under the RCRA Hazardous Waste Manifest System (Renewal); in 40 CFR parts 262, 263, 264 and 265; was approved 02/24/2009; OMB Number 2050-0039; expires 02/29/2012.

EPA ICR Number 2205.02; Focus Groups as Used by EPA for Economics Projects; was approved 03/03/2009; OMB Number 2090-0028; expires 03/31/2012.

EPA ICR Number 2350.01; CERCLA 104(e) Letters for Coal Combustion Waste at Electric Utilities; was approved 03/05/2009; OMB Number 2050-0199; expires 09/30/2009.

#### OMB Comments Filed

EPA ICR Number 2303.01; NESHAP for Ferroalloys Production Facilities (40 CFR part 63, subpart YYYYYY) (Proposed Rule); on 02/24/2009, OMB filed comment.

Dated: March 6, 2009.

**John Moses,**

*Acting Director, Collection Strategies Division.*

[FR Doc. E9-5532 Filed 3-12-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8591-3]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

#### Weekly Receipt of Environmental Impact Statements Filed 03/02/2009 Through 03/06/2009 Pursuant to 40 CFR 1506.9

*EIS No. 20090060, Final EIS, COE, CA,* University of California (UC) Merced Campus and University Community Project, Development of a Major Research University, To Allow for the Discharge of Fill Material into 76.7 Acres of Wetlands, U.S. Army COE Section 404 Permit, Merced County, CA, Wait Period Ends: 04/13/2009, Contact: Nancy Haley 916-557-7731.

*EIS No. 20090061, Draft EIS, AFS, OR,* D-Bug Hazard Reduction Timber Sales Project, To Lessen the Fuel and Safety Hazards Associated with the On-going Outbreak of Mountain Pine Beetles, Diamond Lake Ranger District, Umpqua National Forest, Douglas County, OR, Comment Period Ends: 04/27/2009, Contact: Debbie Anderson 541-957-3466.

*EIS No. 20090062, Draft EIS, FRC, 00,* Catawba-Wataree Hydroelectric

Project (FERC No. 2232), Application for Hydroelectric License, Catawba and Wateree Rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln and Gaston Counties, NC and York, Lancaster, Chester, Fairfield and Kershaw Counties, SC, Comment Period Ends: 04/27/2009, Contact: Patricia Schaub 1-866-208-3372.

*EIS No. 20090063, Final Supplement, UAF, MA,* Pave Paws Early Warning Radar Operation Project, Continued Operation of the Solid-State Phased-Array Radar System (SSPARS), also known as Pave, Phased Array Warning Systems (PAWS), Cape Cod Air Force Station, MA, Wait Period Ends: 04/13/2009, Contact: Lynne Neumann 703-614-0237.

*EIS No. 20090064, Draft EIS, FTA, CA,* Silicon Valley Rapid Transit Corridor Project, Proposes to Construct an Extension of the Bay Area Rapid Transit (BART) Rail System from Warm Spring Station in Fremont to Santa Clara County, CA, Comment Period Ends: 04/27/2009, Contact: James Barr 202-493-2633.

*EIS No. 20090065, Draft EIS, COE, NC,* Western Wake Regional Wastewater Management Facilities, Proposed Construction of Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities to Serve the Towns of Apex, Cary, Holly Springs and Morrisville, Research Triangle Park, Wake County, NC, Comment Period Ends: 04/27/2009, Contact: Henry Wicker 910-251-4930.

#### Amended Notices

*EIS No. 20090054, Draft EIS, AFS, CA,* Stanislaus National Forest Motorized Travel Management (17305) Plan, Implementation, Stanislaus National Forest, CA, Comment Period Ends: 05/05/2009, Contact: Sue Warren 209-532-3671 Ext. 321.

Revision to FR Notice Published 03/06/2009: Correction to the State from NV to CA.

Dated: March 10, 2009.

**Robert W. Hargrove,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E9-5534 Filed 3-12-09; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0182; FRL-8406-7]

### Pesticide Program Dialogue Committee; Notice of Public Meetings

**AGENCY:** Environmental Protection Agency (EPA).



**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on April 22–23, 2009. A draft agenda is under development that will include reports from and discussions about current issues from the following PPDC work groups: Work Group on 21st Century Toxicology/New Integrated Testing Strategies; Work Group on Web-Distributed Labeling; and Work Group on Comparative Safety Statements for Pesticide Product Labeling. The agenda will also include a discussion about current water quality issues (including an update on spray drift); a discussion about an overall strategy regarding incident data, including pyrethroid incidents and pet incidents; and updates on the Endocrine Disruptors Screening Program, Pollinator Protection, and the Endangered Species Act consultation process. Several PPDC work group meetings have also been scheduled in March and April 2009, and are open to the public. Information about all of these meetings can be found on EPA's website at: <http://www.epa.gov/pesticides/ppdc>.

**DATES:** The PPDC meeting will be held on Wednesday, April 22, 2009, from 9 a.m. to 5 p.m., and Thursday, April 23, 2009, from 9 a.m. to 12:15 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The meeting will be held in the Conference Center on the lobby level at the U.S. Environmental Protection Agency's location at 1 Potomac Yard South, 2777 Crystal Drive, Arlington, VA. This location is approximately one mile from the Crystal City Metro Station.

**FOR FURTHER INFORMATION CONTACT:** Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address: [fehrehbach.margie@epa.gov](mailto:fehrehbach.margie@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of particular interest to persons who work in

agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0182. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>.

A draft agenda is available on EPA's web site at: <http://www.epa.gov/pesticides/ppdc>.

**II. Background**

EPA's Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the Environmental Protection Agency's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory

Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed November 2, 2007, for another 2-year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

**III. How Can I Request to Participate in this Meeting?**

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects**

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Pesticide labels, Pesticides and pests, Public health.

Dated: March 6, 2009.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

[FR Doc. E9–5525 Filed 3–12–09; 8:45 am]

**BILLING CODE 6560–50–S**

**FEDERAL RESERVE SYSTEM****Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C.

1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 2009.

**A. Federal Reserve Bank of San Francisco** (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105-1579:

1. *NHB Holdings, Inc., and Proficio Mortgage Ventures, LLC*, both of Jacksonville, Florida, to engage *de novo* in a joint venture with SilverLeaf Mortgage, LLC, Salt Lake City, Utah, in conducting mortgage banking activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 10, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.E9-5454 Filed 3-12-09; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 2009.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Pennsylvania Commerce Bancorp, Inc.*, Harrisburg, Pennsylvania, to merge with Republic First Bancorp, Inc., and thereby indirectly acquire Republic First Bank, both of Philadelphia, Pennsylvania.

**B. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166-2034:

1. *Scott Morgan Bancorp, Inc.*, Bluffs, Illinois, to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bluffs, Bluffs, Illinois.

Board of Governors of the Federal Reserve System, March 10, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.E9-5455 Filed 3-12-09; 8:45 am]

BILLING CODE 6210-01-S

## FEDERAL TRADE COMMISSION

[Docket No. 9324]

### Whole Foods Market, Inc.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before April 6, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Whole Foods Market, Docket No. 9324” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).<sup>1</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://secure.commentworks.com/ftc-WholeFoodsMarket/>) (and following the instructions on the web-based form). To ensure that the Commission considers

<sup>1</sup> FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

an electronic comment, you must file it on the web-based form at the weblink:(<https://secure.commentworks.com/ftc-WholeFoodsMarket>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the "Whole Foods Market, Inc., Docket No. 9324" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

**FOR FURTHER INFORMATION CONTACT:** Albert Y. Kim, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2952.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 6, 2009), on the World Wide Web, at (<http://www.ftc.gov/os/2009/03/index.htm>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

### **Analysis of Agreement Containing Consent Order to Aid Public Comment**

#### **I. INTRODUCTION**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Whole Foods Market, Inc. ("Whole Foods"). The purpose of the proposed Consent Agreement is to remedy the competitive harm resulting from Whole Foods' acquisition of Wild Oats Markets, Inc. ("Wild Oats"), completed on or about August 28, 2007. Under the terms of the proposed Consent Agreement, Whole Foods is required to maintain and subsequently divest a significant portion of the Wild Oats assets at issue in this matter.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and the comments received, and decide whether it should withdraw the Consent Agreement or make it final.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement; it is not intended to constitute an official interpretation of the Consent Agreement or modify its terms in any way.

#### **II. BACKGROUND**

On February 21, 2007, Whole Foods and Wild Oats publicly announced that they had executed a merger agreement pursuant to which Whole Foods would acquire Wild Oats in a transaction

valued at about \$700 million. At the time of the merger announcement, Whole Foods (headquartered in Austin, Texas) and Wild Oats (headquartered in Boulder, Colorado) were the only national operators of premium natural and organic supermarkets ("PNOS") in the United States. Whole Foods operated 194 stores in more than 37 states and the District of Columbia as well as the United Kingdom, and Wild Oats maintained 74 PNOS stores in 24 states.<sup>2</sup>

Wild Oats and Whole Foods offered a unique selection of natural and organic products, amenities, and high levels of customer service that differentiated them from conventional supermarkets, mass merchants, and other categories of food retailers. The combination of Whole Foods and Wild Oats would provide Whole Foods with market power post-acquisition in the PNOS market, leading to significant anticompetitive effects. Staff's investigation confirmed that repositioning by existing competitors or new entry would be inadequate to deter or counteract this harm to competition.

Having reason to believe the proposed transaction would result in competitive harm, the Commission authorized staff to seek a temporary restraining order ("TRO") and preliminary injunctive relief in federal district court and to commence an administrative trial under Part 3 of the Commission's Rules of Practice. Both the district court and administrative complaints alleged that the combined company would increase prices, and decrease the quality and number of offered services, if the merger were permitted to close.

#### **III. LITIGATION HISTORY**

On June 6, 2007, the Commission filed an action in the U.S. District Court for the District of Columbia to seek a TRO and a preliminary injunction against the acquisition. The court granted the TRO on June 7, 2007. On June 28, 2007, the Commission issued an administrative complaint pursuant to Part 3 of its Rules. Given the proceedings in the collateral federal district court case, the Commission, as a matter of discretion, stayed the Part 3 action in an order issued on August 7, 2007.

After a two-day hearing on July 31 and August 1, 2007, the district court denied the Commission's motion for a preliminary injunction on August 16, 2007. On August 17, 2007, the

<sup>2</sup> Wild Oats also operated stores under the Henry's Farmers Market banner (in Southern California), the Sun Harvest banner (in Texas), and the Capers Community Market banner (in British Columbia, Canada).

Commission filed with the U.S. Court of Appeals for the D.C. Circuit a notice of appeal and an emergency motion for an injunction pending appeal. Although the D.C. Circuit initially denied the Commission's emergency motion for an injunction pending appeal, on July 29, 2008, the court of appeals reversed the district court's opinion and found that the Commission had demonstrated the requisite likelihood of success in the preliminary injunction proceeding, and remanded the matter to the district court to address the equities and, if necessary, fashion appropriate relief.<sup>3</sup>

Approximately one week later, on August 8, 2008, the Commission lifted the stay of the Part 3 proceedings, and the Commission issued an amended administrative complaint on September 8, 2008. The amended complaint alleged anticompetitive effects in 22 overlap markets (in which Whole Foods and Wild Oats competed head-to-head) and seven potential competition markets (in which Whole Foods had planned to enter but for the merger).

On January 8, 2009, the district court issued a written order and opinion holding that the issue of likelihood of success had been fully resolved in the Commission's favor by the court of appeals, and confirming that all that remained was to weigh the equities and impose relief, if necessary.

On January 26, 2009, Whole Foods filed a motion to withdraw the matter from administrative litigation, together with a settlement agreement. The Commission granted Whole Foods' motion on January 29, 2009, and temporarily withdrew the matter from administrative adjudication. The withdrawal was subsequently extended until March 6, 2009, as Whole Foods and Commission staff negotiated a remedy in settlement of the ongoing litigation.

#### IV. POST-ACQUISITION INTEGRATION

The acquired Wild Oats assets included stores operating under the Wild Oats banner as well as a number of leases for Wild Oats stores that were closed prior to the acquisition.<sup>4</sup> After

the district court's August 16, 2007 decision denying the Commission's request for a preliminary injunction, Whole Foods consummated its acquisition of Wild Oats and began integrating certain of the acquired Wild Oats assets, rebranding Wild Oats stores, closing other Wild Oats locations, and terminating certain leases.

In the 18 months since the close of the transaction, Whole Foods has closed a number of Wild Oats stores. Whole Foods has maintained leases and physical assets relating to some, but not all, of the closed Wild Oats locations. Within the 29 geographic markets alleged in the complaint, Whole Foods is currently operating 31 former Wild Oats stores and is maintaining control of 19 formerly operating Wild Oats stores.

#### V. THE PROPOSED CONSENT AGREEMENT

In order to remedy, to a significant degree, the anticompetitive effects of the transaction, the Commission has entered into the attached Consent Agreement with Whole Foods, which requires the divestiture of 32 stores, along with associated Wild Oats intellectual property and related assets, leases, properties, and government permits.<sup>5</sup> The Order to Maintain Assets will require Whole Foods to maintain the operating status of the open stores, and maintain all leases (open and dark stores) until divestiture is complete. *See* Appendix A.

The inclusion of the Wild Oats intellectual property is an important component of the package. The intellectual property includes the use, without restriction, of the Wild Oats name. Even months after the acquisition, the Wild Oats brand name retains significant brand equity that has been developed over the past 20 years.

As shown in Appendices A & B of the Decision and Order, Whole Foods is required to divest a significant portion of the acquired and currently operating stores, and all of the formerly operating stores for which leases still exist. These planned divestitures will offer relief in 17 of the 29 geographic markets alleged in the amended administrative complaint, eliminating Whole Foods' monopoly position in these markets, and permitting consumers to once again enjoy the benefits of competition between PNOS operators. These stores also could provide a springboard from

which the acquirer(s) can expand into additional geographic markets.

The proposed order provides that the responsibility for the marketing and sale of the assets to be divested will immediately be put in the hands of the divestiture trustee.<sup>6</sup> The trustee will have six months within which to divest the stores and related assets to a buyer or buyers approved by the Commission. If the trustee has received good faith offers from potential acquirers for certain stores within the initial six-month divestiture period, the Commission may extend the divestiture period for those stores for up to an additional six months. The requirement that any potential acquirer be approved by the Commission is designed to ensure that the potential acquirer(s) intends to put the divested assets, including the stores and the Wild Oats brand, to use in the relevant product market in competition with Whole Foods.

#### VI. OTHER PROVISIONS OF THE CONSENT AGREEMENT

The Consent Agreement contains several additional provisions designed to ensure that competition is, in fact, replicated in the targeted geographic markets. As referenced above, the Consent Agreement requires appointment of a divestiture trustee to oversee the process for divesting the Wild Oats assets. The Food Partners ("TFP") has been appointed to fill this role. TFP is one of the leading investment banking firms in the food retailing industry, with particular expertise in mergers, acquisition, and divestiture services. TFP has advised on a number of supermarket sales and acquisitions, including divesting packages of geographically dispersed national chain supermarkets. For these reasons, TFP is well-suited to serve as divestiture trustee in this matter.

The Consent Agreement also includes an Order to Maintain Assets ("OMA"), which requires Whole Foods to continue to operate the Wild Oats stores until a buyer is identified and approved by the Commission and final closing of the purchase occurs. Because of concerns about possible deterioration of the stores during the divestiture period, the OMA further provides for the appointment of an interim monitor to ensure that Whole Foods maintains the viability, marketability, and competitiveness of the assets and does

<sup>3</sup> Following Whole Foods' August 26, 2008 petition for rehearing *en banc* in the court of appeals, the D.C. Circuit denied the petition and reissued the court's judgment on November 21, 2008. The two judges of the panel majority reissued opinions that reiterated their respective rationales for concluding that the Commission had carried its burden of showing a likelihood of success on the merits and that the district court should conduct an equities analysis to determine whether an injunction should issue.

<sup>4</sup> Immediately following the closing, on September, 30, 2007, Whole Foods sold the Henry's and Sun Harvest stores that Wild Oats had been

operating to Smart & Final Inc., a Los Angeles-based food retailer.

<sup>5</sup> Of the 32 stores, 13 are live stores and 19 are "dark" stores. Dark stores are former Wild Oats stores that are not presently operating, but are under the control of Whole Foods.

<sup>6</sup> Pursuant to the proposed Consent Agreement, although the divestiture of the stores may be made to one or more Commission-approved buyers, the Wild Oats-associated intellectual property may be divested to only a single buyer.

not terminate the operation of any store included in the divestiture package.

#### VII. POST-CONSUMMATION RELIEF

The absence of pre-consummation relief from the district court, and Whole Foods' subsequent integration activities, have made it more difficult for the Commission to obtain complete relief in this matter. However, the proposed Consent Agreement will provide substantial relief to consumers in 17 geographic markets across the United States. Moreover, acceptance of the proposed Consent Agreement will bring immediate, certain relief and avoid the expense and uncertainty inherent in continued litigation. Reestablishing a PNOS competitor in these markets under the Wild Oats banner will reintroduce direct price, quality, and service competition in these areas, restoring to a substantial degree the competition that was eliminated by the acquisition, providing important benefits to consumers, and perhaps creating a springboard for broader competition nationwide.

By direction of the Commission.

**Donald S. Clark**

*Secretary*

[FR Doc. E9-5519 Filed 3-12-09; 8:45 am]

[BILLING CODE 6750-01-S]

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Centers for Disease Control and Prevention

[30 Day-08-0740]

##### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

#### Proposed Project

Medical Monitoring Project (MMP) (OMB No. 0920-0740, exp. June 2010.)—Revision—National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Some MMP interview questions were revised to make them easier for patients to understand and respond appropriately. Medical record abstraction sections were removed, and a provider survey has been added. Revisions to previously approved instruments have been included. The purpose of MMP is to supplement the HIV/AIDS surveillance programs in 26 selected state and local health departments, which collect information on persons diagnosed with, living with, and dying from HIV infection and AIDS.

MMP collects data on behaviors and clinical outcomes from a probability sample of HIV-infected adults receiving care in the U.S. Collection of data from interviews with HIV-infected patients provides information on patient demographics, and the current levels of behaviors that may facilitate HIV transmission: Sexual and drug use behaviors; patients' access to, use of and

barriers to HIV-related secondary prevention services; utilization of HIV-related medical services; and adherence to drug regimens. Collection of data from patient medical records provide information on: Demographics and insurance status; the prevalence and incidence of AIDS-defining opportunistic illnesses and co-morbidities related to HIV disease; the receipt of prophylactic and antiretroviral medications; and whether patients are receiving screening and treatment according to Public Health Service guidelines. The provider survey will collect data from a nationally representative sample of HIV care providers selected to participate in MMP. The provider survey will collect information on: Health care providers' professional training history, ongoing sources of training and continuing education about HIV care and treatment, perceptions of patients' barriers to care and reasons for declining HIV care, awareness of HIV related resources, and approach to antiretroviral therapy management and HIV risk reduction counseling. No other Federal agency collects national population-based behavioral and clinical information from HIV-infected adults in care or HIV care providers.

The data will have significant implications for policy, program development, and resource allocation at the state/local and national levels. Users of MMP data include, but are not limited to, Federal agencies, State and local health departments, clinicians, researchers, and HIV prevention and care planning groups.

There are no costs to the respondents other than their time.

The total estimated annualized burden hours are 9,603.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Patients .....	Standard Interview .....	7,988	1	45/60
Patients .....	Short Interview .....	332	1	20/60
Facility office staff .....	Medical Record Abstraction .....	7,488	1	3/60
Facility office staff .....	None (providing estimated patient loads) .....	936	1	2
Facility office staff .....	None providing patient lists) .....	1,030	1	30/60
Facility office staff .....	None approaching patients for enrollment) ...	3,120	1	5/60
Physicians, nurse practitioners, physician's assistants.	Provider Survey .....	1,440	1	20/60

Dated: March 5, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9-5489 Filed 3-12-09; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R-305, CMS-643, CMS-359/360/R-55 and CMS-10277]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**1. Type of Information Collection Request:** Extension of a currently approved collection; **Title of Information Collection:** External Quality Review Protocols; **Use:** The results of Medicare reviews, Medicare accreditation services, and Medicaid external quality reviews will be used by States in assessing the quality of care provided to Medicaid beneficiaries by managed care organizations and to provide information on the quality of care provided to the general public upon request. **Form Number:** CMS-R-305 (OMB#: 0938-0786); **Frequency:** Reporting—Yearly; **Affected Public:** State, Local or Tribal Governments; **Number of Respondents:** 40; **Total Annual Responses:** 40; **Total Annual Hours:** 520,000. (For policy questions regarding this collection contact Gary B. Jackson at 410-786-1218. For all other issues call 410-786-1326.)

**2. Type of Information Collection Request:** Extension of a currently approved collection; **Title of Information Collection:** Hospice Survey and Deficiencies Report; **Use:** In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form is used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process. **Form Number:** CMS-643 (OMB#: 0938-0379); **Frequency:** Reporting—Yearly; **Affected Public:** State, Local or Tribal Governments; **Number of Respondents:** 3377; **Total Annual Responses:** 1130; **Total Annual Hours:** 1130. (For policy questions regarding this collection contact Kim Roche at 410-786-3524. For all other issues call 410-786-1326.)

**3. Type of Information Collection Request:** Extension of a currently approved collection; **Title of Information Collection:** Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements at 42 CFR 485.54 through 485.66; **Use:** In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to CMS. **Form Number:** CMS-359/360/R-55 (OMB#: 0938-0267); **Frequency:** Reporting—Occasionally; **Affected Public:** Private Sector; Business or other for-profits; **Number of Respondents:** 476; **Total Annual Responses:** 60; **Total Annual Hours:** 223,285. (For policy questions regarding this collection contact Georgia Johnson at 410-786-6859. For all other issues call 410-786-1326.)

**4. Type of Information Collection Request:** New collection; **Title of Information Collection:** Hospice Conditions of Participation and Supporting Regulations in 42 CFR 418.52, 418.54, 418.56, 418.58, 418.60, 418.64, 418.66, 418.70, 418.72, 418.74, 418.76, 418.78, 418.100, 418.106, 418.108, 418.110, 418.112, and 418.114; **Use:** The Conditions of Participation and accompanying requirements are used by Federal and State surveyors as a basis for determining whether a hospice qualifies for approval or re-approval under Medicare. The healthcare industry and CMS believe that the availability of the records and general content of records

as specified in the Conditions of Participation final rule (72 FR 32088), is standard medical practice, and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. **Form Number:** CMS-10277 (OMB#: 0938-New); **Frequency:** Reporting and Recordkeeping—Yearly; **Affected Public:** Business or other for-profit and Not-for-profit institutions; **Number of Respondents:** 2,872; **Total Annual Responses:** 1,808,345; **Total Annual Hours:** 2,152,396. (For policy questions regarding this collection contact Danielle Shearer at 410-786-6617. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by May 12, 2009:

**1. Electronically.** You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

**2. By Regular Mail.** You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: March 9, 2009.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E9-5457 Filed 3-12-09; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3211-N]

#### Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—May 6, 2009

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces that a public meeting of the Medicare Evidence Development and Coverage Advisory Committee (MEDCAC) (“Committee”) will be held on Wednesday, May 6, 2009. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. The Committee may also review and evaluate medical literature and make recommendations concerning items and services that may be eligible for Medicare coverage. This meeting will focus on the requirements for evidence to determine if the use of screening genetic testing of beneficiaries without signs or symptoms of disease improves health outcomes in Medicare beneficiaries. The meeting will discuss the various kinds of evidence that are useful to support requests for Medicare coverage in this field. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

**DATES:** *Meeting Date:* The public meeting will be held 7:30 a.m. until 4:30 p.m., daylight saving time (*d.s.t.*) on Wednesday, May 6, 2009.

*Deadline for Submission of Written Comments:* Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., *d.s.t.* on Monday, April 6, 2009. Once submitted, comments are final.

*Deadlines for Speaker Registration and Presentation Materials:* The deadline to register to be a speaker, and to submit materials and writings that will be used in support of an oral presentation, is 5 p.m., *d.s.t.* on Monday, April 6, 2009. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

*Deadline for All Other Attendees Registration:* Individuals may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m., *d.s.t.* on Wednesday, April 29, 2009.

*Deadline for Submitting a Request for Special Accommodations:* Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., *d.s.t.* Wednesday, April 29, 2009.

**ADDRESSES:** Meeting Location: The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

*Submission of Presentations and Comments:* Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to [MedCACpresentations@cms.hhs.gov](mailto:MedCACpresentations@cms.hhs.gov) or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410-786-0309) or via e-mail at [Maria.Ellis@cms.hhs.gov](mailto:Maria.Ellis@cms.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780.)) This notice announces the May 6, 2009, public meeting of the Committee. During this meeting, the Committee will discuss the requirements for evidence to determine if the use of screening genetic testing in beneficiaries without signs or symptoms of disease improves health outcomes in Medicare beneficiaries. Background information about this topic, including panel materials, is available at <http://www.cms.hhs.gov/coverage>.

##### II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 30 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: [http://www.cms.hhs.gov/mcd/index\\_list.asp?list\\_type=mcac](http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac). We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

##### III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating the meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

##### IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the



Federal Protective Service or Guard Service personnel.

- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.

- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

**Authority:** 5 U.S.C. App. 2, section 10(a). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 5, 2009.

**Barry M. Straube,**

*Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.*

[FR Doc. E9-5458 Filed 3-12-09; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

##### Proposed Project

*Title:* Project LAUNCH Cross-Site Evaluation.

*OMB Number:* New Collection.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data as part of a cross-site evaluation of a new initiative called Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). Project LAUNCH is intended to promote the healthy development and wellness of children ages birth to eight years. A total of six Project LAUNCH grantees are funded to improve coordination among child-serving systems, build infrastructure, and improve methods for providing services. Grantees will also implement a range of public health strategies to support young child wellness in a designated locality.

Data for the cross-site evaluation of Project LAUNCH will be collected

through: (1) Interviews conducted during annual site-visits to Project LAUNCH grantees, and (2) semi-annual reports that will be submitted electronically on a web-based data-entry system. Information will be collected from all six Project LAUNCH grantees.

During annual site visits, researchers will conduct interviews with Project LAUNCH service providers and collaborators in States/tribes and local communities of focus. Site visitors will ask program administrators questions about all Project LAUNCH activities, including: infrastructure development; collaboration and coordination among partner agencies, organizations, and service providers; and development, implementation, and refinement of service strategies.

As part of the proposed data collection, Project LAUNCH staff will be asked to submit semi-annual electronic reports about the systems development, services that children and families receive, and provider, child and family outcomes. The electronic data report also will collect data about other Project LAUNCH-funded service enhancements, such as trainings, Project LAUNCH systems change activities, and project costs. Information provided in these reports will be tracked on a monthly basis.

*Respondents:* State/ tribal Child Wellness Coordinator, State/ tribal Wellness Council Members, State ECCS Project Director, Local Child Wellness Coordinator, Local Wellness Council Members, Local Evaluator, and Local Service Providers.

#### ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
State/Tribal Level Site Visit Interview Protocol .....	24	1	.875	21
Local Level Site Visit Interview Protocol .....	36	1	.75	27
Electronic Data Reporting .....	150	2	1.5	450

*Estimated Total Annual Burden Hours: 498.*

In compliance with the requirements of Section 3506(c) (2) (A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant

Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 5, 2009.

**Brendan C. Kelly,**

*Reports Clearance Officer.*

[FR Doc. E9-5165 Filed 3-12-09; 8:45 am]

**BILLING CODE 4184-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

#### Proposed Project

*Title:* Head Start/Early Head Start Emergency Preparedness Survey.

*OMB No.:* New Collection.

*Description:* The Office of Head Start, within the Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS), is planning a survey to collect data on Head Start and Early Head Start programs' emergency preparedness policies and procedures. Section 649(m) (2) of Public Law 110-134, "The Improving Head Start for School Readiness Act of 2007" states, "The Secretary shall evaluate the Federal, State, and local preparedness of Head Start programs, including Early Head Start programs to respond appropriately in the event of a large-scale emergency, \* \* \*." The Head Start/Early Head Start

Emergency Preparedness Survey was created in response to this request and will gather uniform data about current emergency preparedness policies and procedures for responding to large-scale emergencies of Head Start and Early Head Start programs.

*Respondents:* Head Start and Early Head Start grantees.

#### ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Head Start Emergency Preparedness Survey .....	1,604	1	0.5	802

*Estimated Total Annual Burden Hours:* 802.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 5, 2009.

**Brendan C. Kelly,**

*Reports Clearance Officer.*

[FR Doc. E9-5166 Filed 3-12-09; 8:45 am]

**BILLING CODE 4184-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Request for Public Comment Concerning Requirements for Transferring Children From the Placement and Care Responsibility of a State Title IV-E Agency to a Tribal Title IV-E Agency and Tribal Share of Title IV-E Administration and Training Expenditures

**AGENCY:** Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families.

**ACTION:** Request for Public Comment and Tribal Consultation Meetings.

**SUMMARY:** Effective October 1, 2009, Public Law 110-351 provides Indian Tribes with the option to operate a foster care, adoption assistance and, at Tribal option, a kinship guardianship assistance program under title IV-E of the Social Security Act (the Act). The Federal government would share in the costs of Tribes operating an ACF-approved title IV-E program. Public Law 110-351 requires that ACF develop interim final rules after consulting with

Tribes and affected States on the implementation of the Tribal plan requirements in section 479B of the Act and other amendments made by the Tribal provisions in section 301 of Public Law 110-351. The law requires that such regulations include: (1) Procedures to ensure that a transfer of State responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E plan occurs in a manner that does not affect the child's eligibility for title IV-E or title XIX Medicaid and such services or payments; and, (2) the in-kind expenditures from third-party sources permitted for the Tribal share of administration and training expenditures under title IV-E. This notice is designed to provide a written opportunity for comment to all interested persons, and specifically the affected States and to notify Tribal leaders of in-person opportunities to consult with the Children's Bureau on the development of these regulations.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 12, 2009. Please see **SUPPLEMENTARY INFORMATION** for additional details on the Tribal consultation meetings.

**ADDRESSES:** Interested persons may submit written comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *E-mail: CBComments@acf.hhs.gov.* Please include "Request for Public Comment on Tribal IV-E Requirements" in the subject line of the message.

• *Mail or Courier Delivery:* Miranda Lynch, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue, SW., 8th Floor, Washington, DC 20024.

**Instructions:** Please be aware that mail sent to us may take an additional 3–4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight, or other special delivery method, please ensure first that they are able to deliver to the above address. We urge you to submit comments electronically to ensure they are received in a timely manner. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided. Comments provided to us during a meeting or in writing in response to this **Federal Register** notice will receive equal consideration by ACF.

**FOR FURTHER INFORMATION CONTACT:** Miranda Lynch, Children's Bureau, 1250 Maryland Ave., SW., 8th Floor, Washington, DC 20024; (202) 205–8138, [miranda.lynch@acf.hhs.gov](mailto:miranda.lynch@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Title IV-E Background**

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110–351 was enacted on October 7, 2008. Prior to the law's enactment, the title IV-E program provided States and territories (hereafter, "States") with Federal funds to support eligible children in foster care, eligible children with special needs in adoptions, and to assist the State with the administrative expenses of operating the title IV-E program. The law, as amended, permits Federally-recognized Indian Tribes, Tribal organizations or consortia (hereafter, "Tribes") to apply to ACF to operate a title IV-E program beginning October 1, 2009. By law, the requirements of the title IV-E statute apply to such Tribes "in the same manner as this part applies to a State" (section 479B(b) of the Act), with limited exceptions. Public Law 110–351 also provides limited funding, beginning in Federal fiscal year (FY) 2009, for Tribes that intend to submit an application to ACF for direct funding of the title IV-E program that apply for a grant to assist in developing a title IV-E plan. Finally, the law codifies a Tribe's ability to enter into agreements

and contracts with State title IV-E agencies to share in the administration of the title IV-E programs on behalf of Indian children in their placement and care responsibility.

In addition to creating this opportunity for Tribes, the law permits title IV-E agencies who choose to do so to administer a new kinship guardianship assistance program under title IV-E, revises the eligibility criteria for the title IV-E adoption assistance program, allows title IV-E agencies to choose to extend title IV-E foster care, adoption assistance, and kinship guardianship payments to youth who meet certain conditions up to age 21, among other changes to the title IV-B and IV-E requirements. The entire law and issuances related to the new provisions can be found on the Children's Bureau's Web site at <http://www.acf.hhs.gov/programs/cb>.

**Implementation of the Tribal Title IV-E Plan**

The law limits exceptions or modifications to the title IV-E statutory requirements for Tribes that will directly operate a title IV-E program to those granted in the law (*i.e.*, the ability for Tribes to define their own service areas, Tribal licensing standards and flexibility to use *nunc pro tunc* and affidavits to meet judicial determination requirements in the first 12 months of operation of the Tribal title IV-E plan). This means that Tribes wishing to operate their own title IV-E plan must adhere to the following requirements:

- Secretarial approval of a plan to operate a title IV-E foster care (per section 472 of the Act) and adoption assistance program (per section 473 of the Act) that complies with the applicable title IV-E plan requirements in sections 471(a) and definitions in section 475 of the Act;
- Tribal title IV-E plan provisions in section 479B of the Act;
- Regulations in 45 CFR 1355 and 1356 or incorporated by cross-reference, except to the extent that such regulations either have been superseded by Public Law 110–351 or are not applicable at this time to directly-funded Tribes (*e.g.*, regulations requiring title IV-E eligibility reviews and Child and Family Services Reviews); and,
- Federal reporting requirements as required by the Secretary (section 471(a)(6) of the Act).

**Transfer of Placement and Care of Title IV-E Children**

The law requires the Secretary to issue interim final rules on the transfer of children in foster care under a State

title IV-E plan to the placement and care responsibility of a Tribe under a directly-funded Tribal title IV-E plan to ensure that the children maintain their eligibility for title IV-E and title XIX Medicaid. We note that the Indian Child Welfare Act (ICWA) of 1978 provides existing statutory direction for State courts to transfer certain child custody proceedings—including foster care—involving Indian children to the jurisdiction of Indian courts. The Bureau of Indian Affairs, Department of the Interior, has also issued guidelines regarding such transfers in "Guidelines for State Courts—Indian Child Custody Proceedings" (see 44 FR 67584, November 26, 1979).

**Tribal Share of Title IV-E Administration and Training Expenditures**

Tribes whose title IV-E plans are approved by the Secretary may receive Federal reimbursement of a share of title IV-E allowable administrative and training costs (section 479B(c)(1)(D) of the Act). As of October 1, 2009, the law permits such Tribes, but not States, to use in-kind funds from third-party sources in contributing their Tribal share of such costs. The law establishes initial provisions for permitted third-party sources and sets specific limits on the percentage of the Tribal share that may be used for title IV-E purposes. The law requires HHS to develop interim final regulations on the Tribal share provisions to apply beginning in FY 2012.

**Opportunity To Comment**

Interim final rules are final rules that have immediate effect without the Federal agency first issuing and inviting public comment on a notice of proposed rulemaking. Because the law requires us to promulgate interim final regulations on the limited topics of the procedures to effect the transfer of children from State to directly-funded Tribal title IV-E plans and the in-kind third party match sources and percentages in consultation with Indian Tribes, Tribal organizations, Tribal consortia, and affected States we will hold in-person Tribal consultation meetings to discuss these topics. Affected States may submit written comments on these issues. Specifically, we are seeking comments on the following:

- Considering that the Secretary is to apply title IV-E of the Act to Tribes in the same manner as to States except where directed by law, what, if any, provisions and clarifications related to the title IV-E program for directly-funded Tribes should be in regulations?

- Are guidelines above and beyond those provided pursuant to the ICWA needed to execute the transfer of placement and care responsibility of a title IV–E Indian child to a Tribe operating a title IV–E plan? If, so please provide suggestions.

- What specific information pertaining to title IV–E and title XIX Medicaid should a State make available to a Tribe that seeks to gain placement and care responsibility over an Indian child?

- Should the third-party sources and in-kind limits on Tribal administrative and training costs remain consistent with section 479B(c)(1)(D) of the Act? Please provide a rationale for this response.

Any other comments regarding the development of an interim final rule per section 301(e) of Public Law 110–351 are welcome. Please note, however, that this request is limited in scope and is not intended to solicit comments on the remaining provisions of Public Law 110–351.

#### Tribal Consultation

We invite Tribal leaders and/or the representatives of Federally recognized Tribes to attend consultation meetings that will be held across the United States to provide their input on the issues subject to regulations as explained below. Tribal leaders and/or their representatives who choose to attend a consultation session must register at least one week in advance of the meeting date by contacting the applicable Children's Bureau (CB) Regional Program Manager. Registered participants for the consultation session may submit written remarks in advance, or present them in oral or written form at the consultation session. Tribal leaders and/or their representatives, regardless of whether they participate in the consultation session, may provide written comments as noted in the **ADDRESSES** section. Finally, please note that Federal representatives attending the consultation sessions will not be able to respond directly during the session to the concerns or questions raised by participants. The consultation sessions and contact information are listed below:

#### Thursday, March 26, 2009—Region V

Park Plaza Bloomington Hotel, 4460 West 78th Street Circle, Bloomington, MN 55435.

Region includes: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

Contact: Carolyn Wilson-Hurey, CB Regional Program Manager, phone (312)

353–4237 or e-mail [carolyn.wilson-hurey@acf.hhs.gov](mailto:carolyn.wilson-hurey@acf.hhs.gov).

#### Friday, March 27, 2009—Region VII

Federal Office Building, 601 E 12th Street, Kansas City, MO 64106.

Region includes: Iowa, Kansas, Missouri and Nebraska.

Contact: Rosalyn Wilson, CB Regional Program Manager, phone (816) 426–2262 or e-mail [rosalyn.wilson@acf.hhs.gov](mailto:rosalyn.wilson@acf.hhs.gov).

#### Thursday, April 9, 2009—Region X

2201 Sixth Avenue, Seattle, WA 98121–1827.

Region includes: Alaska, Idaho, Oregon and Washington.

Contact: John Henderson, CB Regional Program Manager, phone (206) 615–2482 or e-mail [john.henderson@acf.hhs.gov](mailto:john.henderson@acf.hhs.gov).

#### Friday, April 17, 2009—Region VIII

Byron Rogers Federal Building, 1961 Stout Street, Denver, CO 80294.

Region includes: Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

Contact: Marilyn Kennerson, CB Regional Program Manager, phone (303) 844–3100 or e-mail [marilyn.kennerson@acf.hhs.gov](mailto:marilyn.kennerson@acf.hhs.gov).

#### Monday, April 27, 2009—Region IX

90 7th Street—Conf. Rm. B040 and B020, San Francisco, CA 94103.

Region includes: Arizona, California, Hawaii, Nevada, Outer Pacific—American Samoa, Commonwealth of the Northern Marianas, Federated States of Micronesia (Chuuk, Pohnpei, Yap), Guam, Marshall Islands and Palau.

Contact: Sally Flanzer, CB Regional Program Manager, phone (415) 437–8400 or e-mail [sally.flanzer@acf.hhs.gov](mailto:sally.flanzer@acf.hhs.gov).

#### Thursday, April 30, 2009—Region VI

1301 Young Street, Room 1119, Dallas, TX 75202.

Region includes: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Contact: June Lloyd, CB Regional Program Manager, phone (214) 767–8466 or e-mail [june.lloyd@acf.hhs.gov](mailto:june.lloyd@acf.hhs.gov).

#### Wednesday, May 13, 2009—Regions I, II & IV

Semi-Annual meeting of the United Southern and Eastern Tribes.

Paragon Casino Resort Hotel, 711 Paragon Place, Marksville, LA 71351.

Region I includes: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Contact: Bob Cavanaugh, CB Regional Program Manager, phone (617) 565–1020 or e-mail [bob.cavanaugh@acf.hhs.gov](mailto:bob.cavanaugh@acf.hhs.gov).

Region II includes: New Jersey, New York, Puerto Rico and the Virgin Islands.

Contact: Junius Scott, CB Regional Program Manager, phone (212) 264–2890 or e-mail [junius.scott@acf.hhs.gov](mailto:junius.scott@acf.hhs.gov).

Region IV includes: Alabama, Mississippi, Florida, North Carolina, Georgia, South Carolina, Kentucky and Tennessee.

Contact: Ruth Walker, CB Regional Program Manager, phone (404) 562–2901 or e-mail [ruth.walker@acf.hhs.gov](mailto:ruth.walker@acf.hhs.gov).

Dated: March 9, 2009.

**Curtis Coy,**

*Acting Assistant Secretary for Administration.*

[FR Doc. E9–5505 Filed 3–12–09; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### State Median Income Estimate for a Four-Person Family: Notice of the Federal Fiscal Year (FFY) 2010 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) (Catalog of Federal Domestic Assistance Number 93.568) Administered by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services, Division of Energy Assistance

**AGENCY:** Administration for Children and Families, Office of Community Services, Division of Energy Assistance, HHS.

**ACTION:** Notice of State median income estimates for FFY 2010.

**SUMMARY:** This notice announces to LIHEAP grantees the estimated median income of four-person families in each State and the District of Columbia for FFY 2010 (October 1, 2009, to September 30, 2010). LIHEAP grantees that choose to base their income eligibility criteria on these State median income estimates may adopt these estimates (up to 60 percent) on the estimates' date of publication in the **Federal Register** or on a later date as discussed below. This enables these grantees to implement this notice during the period between the heating and cooling seasons.

However, by October 1, 2009, or the beginning of the grantees' fiscal years, whichever is later, these grantees must adjust their income eligibility criteria so that such criteria are in accord with the

FFY 2010 State median income estimates.

This listing of 60 percent of estimated State median incomes provides one of the maximum income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

**DATES: Effective Date:** For each LIHEAP grantee, these estimates become effective at any time between their date of publication in the **Federal Register** and the later of October 1, 2009, or the beginning of that grantee's fiscal year.

**FOR FURTHER INFORMATION CONTACT:** Peter Edelman, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401-5292, E-Mail: [peter.edelman@acf.hhs.gov](mailto:peter.edelman@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the provisions of section 2603(11) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law (Pub. L.) 97-35, as amended, HHS announces the estimated median income of four-person families for each State, the District of Columbia, and the United States for FFY 2010 (October 1, 2009, through September 30, 2010).

Section 2605(b)(2)(B)(ii) of this Act provides that 60 percent of the median income for each State and the District of Columbia (State median income, or SMI), as annually established by the Secretary of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in

determining a household's eligibility for LIHEAP.

LIHEAP was last authorized by the Energy Policy Act of 2005, Public Law 109-58, which was enacted on August 8, 2005. This authorization expired on September 30, 2007, and reauthorization remains pending.

The SMI estimates that HHS publishes in this notice are three-year estimates derived from the American Community Survey (ACS) conducted by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau). HHS obtained these estimates directly from the Census Bureau. For additional information about the ACS State median income estimates, see <http://www.census.gov/hhes/www/income/medincsizeandstate.html>. For additional information about the ACS in general, see <http://www.census.gov/acs/www/> or contact the Census Bureau's Housing and Household Economic Statistics Division at (301) 763-3243.

Under the advice of the Census Bureau, HHS switched to three-year estimates rather than single-year estimates to reduce the large year-to-year fluctuations that the single-year estimates tend to generate for certain States and the District of Columbia. The change from the single-year to three-year estimates caused the FFY 2010 estimates to drop by about two percent on average. HHS plans to use the Census Bureau's ACS-derived SMI three-year estimates for all fiscal years after 2010. For further information about ACS one-year and three-year estimates,

see [http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?\\_content=acs\\_guidance.html](http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?_content=acs_guidance.html).

The State median income estimates, like those derived from any survey, are subject to two types of errors: (1) Nonsampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample. For additional information about the accuracy of the ACS State median income estimates, see <http://www.census.gov/acs/www/Downloads/ACS/accuracy2005-2007.pdf>.

A State-by-State listing of SMI and 60 percent of SMI for a four-person family for FFY 2010 follows. The listing describes the method for adjusting SMI for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which were published in the **Federal Register** on March 3, 1988, at 53 FR 6824 and amended on October 15, 1999, at 64 FR 55858.

Dated: March 5, 2009.

**Yolanda J. Butler, PhD,**  
Acting Director, Office of Community Services.

**Estimated State Median Income for a Four-Person Family, by State, for Federal Fiscal Year (FFY) 2010, for Use in the Low Income Home Energy Assistance Program (LIHEAP)**

States	Estimated state median income for a four-person family <sup>1</sup>	60 Percent of estimated state median income for a four-person family <sup>2 3</sup>
Alabama .....	\$60,382	\$36,229
Alaska .....	79,770	47,862
Arizona .....	66,839	40,103
Arkansas .....	54,662	32,797
California .....	76,388	45,833
Colorado .....	76,200	45,720
Connecticut .....	97,708	58,625
Delaware .....	79,709	47,825
District of Columbia .....	64,678	38,807
Florida .....	67,014	40,208
Georgia .....	68,776	41,266
Hawaii .....	84,438	50,663
Idaho .....	60,560	36,336
Illinois .....	77,813	46,688
Indiana .....	68,410	41,046
Iowa .....	70,967	42,580
Kansas .....	69,863	41,918
Kentucky .....	61,207	36,724
Louisiana .....	61,438	36,863
Maine .....	66,948	40,169
Maryland .....	96,952	58,171
Massachusetts .....	93,351	56,011
Michigan .....	75,149	45,089
Minnesota .....	83,444	50,066
Mississippi .....	52,870	31,722

States	Estimated state median income for a four-person family <sup>1</sup>	60 Percent of estimated state median income for a four-person family <sup>2 3</sup>
Missouri .....	66,939	40,163
Montana .....	62,353	37,412
Nebraska .....	69,854	41,912
Nevada .....	68,646	41,188
New Hampshire .....	88,625	53,175
New Jersey .....	97,326	58,396
New Mexico .....	53,041	31,825
New York .....	78,061	46,837
North Carolina .....	64,591	38,755
North Dakota .....	67,183	40,310
Ohio .....	71,063	42,638
Oklahoma .....	57,247	34,348
Oregon .....	67,605	40,563
Pennsylvania .....	75,161	45,097
Rhode Island .....	83,241	49,945
South Carolina .....	61,494	36,896
South Dakota .....	64,930	38,958
Tennessee .....	61,581	36,949
Texas .....	62,358	37,415
Utah .....	65,460	39,276
Vermont .....	73,550	44,130
Virginia .....	81,919	49,151
Washington .....	77,676	46,606
West Virginia .....	56,430	33,858
Wisconsin .....	75,111	45,067
Wyoming .....	72,788	43,673

Note: FFY 2010 covers the period of October 1, 2009, through September 30, 2010. The estimated median income for a four-person family living in the United States for this period is \$72,336. These estimates become effective for LIHEAP at any time between the date of this publication and October 1, 2009, or the beginning of a LIHEAP grantee's fiscal year, whichever is later.

<sup>1</sup> Prepared by the U.S. Census Bureau, U.S. Department of Commerce (Census Bureau), from an average of data from the 2005, 2006 and 2007 American Community Surveys (ACSs). These estimates, like those derived from any survey, are subject to two types of errors: (1) Non-sampling Error, which consists of random errors that increase the variability of the data and non-random errors that consistently direct the data into a specific direction; and (2) Sampling Error, which consists of the error that arises from the use of probability sampling to create the sample.

<sup>2</sup> These figures were calculated by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Energy Assistance (DEA) by multiplying the estimated State median income for a four-person family for each State by 60 percent.

<sup>3</sup> To adjust for different sizes of family, 45 CFR 96.85 calls for multiplying 60 percent of a State's estimated median income for a four-person family by the following percentages: 52 percent for one person, 68 percent for two persons, 84 percent for three persons, 100 percent for four persons, 116 percent for five persons, and 132 percent for six persons. For each additional family member above six persons, 45 CFR 96.85 calls for adding 3 percentage points to the percentage for a six-person family (132 percent) and multiply the new percentage by 60 percent of a State's estimated median income for a four-person family.

[FR Doc. E9-5412 Filed 3-12-09; 8:45 am]

BILLING CODE 4184-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-N-0633]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Adverse Drug Experience Reporting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget

(OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by April 13, 2009.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0230. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3792.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Postmarketing Adverse Drug Experience Reporting (OMB Control Number 0910-0230—Extension)

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations at §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take the action

necessary to protect the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those based on information from applicable scientific literature and certain reports from postmarketing studies. Section 314.80(c)(1)(iii) pertains to such reports submitted by non-applicants. Under § 314.80(c)(2), applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences and an index of these reports, a narrative summary and analysis of adverse drug experiences and a history of actions taken because of adverse drug experiences. Under § 314.80(i), applicants must keep records of all adverse drug experience

reports known to the applicant for 10 years.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Section 310.305(c)(5) pertains to the submission of followup reports to reports forwarded by FDA. Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provide the opportunity to collect information on rare, latent, and long-term effects.

Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning), decisions about risk evaluation and mitigation strategies or the need for postmarket studies or clinical trials, and when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants.

In the **Federal Register** of December 16, 2008 (73 FR 76358), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)	1	1	1	1	1
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	642	17.88	11,478	60	688,680
Total					688,686

<sup>1</sup> The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control no. 0910-0291. The capital costs or operating and maintenance costs associated with this collection of information are approximately \$25,000 annually.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
310.305(f)	25	1	25	16	400
314.80(i)	642	623	400,000	16	6,400,000
Total					7,088,680

<sup>1</sup> There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of \$22,000 annually.



Dated: March 6, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-5494 Filed 3-12-09; 8:45 am]

**BILLING CODE 4160-01-S**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[FDA-2009-N-0667]

[FDA 225-07-8006]

#### **Memorandum of Understanding With Baylor College of Medicine, The University of Texas M.D. Anderson Cancer Center, Rice University, University of Houston, The University of Texas Health Science Center at Houston, Texas A&M Health Science Center, The University of Texas Medical Branch at Galveston, and The Methodist Hospital Research Institute for the FDA-ANH Nanotechnology Initiative**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) with The Alliance for NanoHealth (ANH), a collaboration among: Baylor College of Medicine, The University of Texas M.D. Anderson Cancer Center, Rice University, University of Houston, The University of Texas Health Science Center at Houston, Texas A&M Health Science Center, The University of Texas Medical Branch at Galveston, and The Methodist Hospital Research Institute. This MOU identifies the terms of collaboration between FDA and ANH in the area of nanotechnology. Specifically, this MOU establishes the FDA-ANH Nanotechnology Initiative (FANTI), a public-private partnership dedicated to the identification of scientific and translational gaps in moving nanoengineered medical products from the preclinical stages of development through clinical stages and then to commercialization, all with immediate benefit to public health. The activities are aligned with the mutual interests and respective missions of the Parties, including the FDA's Critical Path Initiative which seeks to modernize the

product development and regulatory sciences needed to reduce uncertainties about product performance throughout the product life cycle. Thus, a key goal for the Parties is to improve the safety and efficacy of nanoengineered products and speed their delivery to the patients who need them and the consumers who use them.

**DATES:** The agreement became effective February 11, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Wendy R. Sanhai, Office of the Commissioner (HZ-1), Food and Drug Administration, 5600 Fishers Lane, suite 6A-08, Rockville, MD 20857, 301-827-7867.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: March 4, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

**BILLING CODE 4160-01-S**

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MOU# 225-07-8006

**MEMORANDUM OF UNDERSTANDING  
BY AND AMONG THE**

**UNITED STATES FOOD AND DRUG ADMINISTRATION**

**BAYLOR COLLEGE OF MEDICINE**

**THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER**

**RICE UNIVERSITY**

**UNIVERSITY OF HOUSTON**

**THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON**

**TEXAS A&M HEALTH SCIENCE CENTER**

**THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON**

**THE METHODIST HOSPITAL RESEARCH INSTITUTE**

**FOR THE**

**FDA-ANH NANOTECHNOLOGY INITIATIVE**

## MOU# 225-07-8006

This Memorandum of Understanding (MOU) is executed by and among the United States Food and Drug Administration (FDA), Baylor College of Medicine (BCM), William Marsh Rice University (Rice), University of Houston (UH), The University of Texas M. D. Anderson Cancer Center (UTMDACC), The University of Texas Medical Branch at Galveston (UTMB), The University of Texas Health Science Center at Houston (UTHSCH), Texas A & M Health Science Center (Texas A&M) and The Methodist Hospital Research Institute (TMHRI), hereafter referred to individually as a "Party" and collectively as the "Parties." This MOU is deemed effective on the date of the last Party to sign (Effective Date).

WHEREAS, each Party has unique expertise in certain areas of nanotechnology, regulatory science, and other areas of translational, health related and clinical sciences; and

WHEREAS, the Parties wish to leverage their expertise and resources for the purposes of stimulating innovation in the field of nanotechnology and working collaboratively to bridge scientific gaps and to develop evaluative and predictive tools to facilitate the development of nanoengineered medical products in the interest of public health; and

WHEREAS, the Parties recognize the existence of a collaboration among the eight (8) academic institutions represented in this MOU called the Alliance for NanoHealth (ANH) which functions under the terms and conditions of the Alliance for NanoHealth Operating Agreement. The ANH will serve to facilitate and coordinate the activities contemplated hereunder,

NOW, THEREFORE, in consideration of the mutual agreement of the Parties hereto, and of the covenants and conditions hereinafter expressed, the Parties hereby agree as follows:

## **I. PURPOSE**

The Parties will work with multiple organizations, facilitated and coordinated through the ANH, to identify scientific and translational gaps in moving nanoengineered medical products from the preclinical stages of development through clinical stages and then to commercialization, all with immediate benefit to public health. The activities described herein are aligned with the mutual interests and respective missions of the Parties, including the FDA's Critical Path Initiative which seeks to modernize the product development and regulatory sciences needed to reduce uncertainties about product performance throughout the product life cycle. Thus, a key goal for the Parties is to improve the safety and efficacy of nanoengineered products and speed their delivery to the patients who need them and the consumers who use them.

## **II. BACKGROUND**

The FDA's mission is to protect the public health by ensuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation's food supply, cosmetics, and products that emit radiation. The FDA is interested in understanding the risks and benefits of nano-engineered medical product development to the extent that this information can facilitate the regulatory review and evaluation of new medical products that incorporate nanotechnology.

**MOU# 225-07-8006**

The ANH was created out of a unique multi-disciplinary, multi-institutional collaborative research endeavor linking eight (8) academic and clinical institutions in the Greater Houston region with an aim of leveraging their resources and technical expertise in nanotechnology to bridge the gaps between medicine, biology, materials science, computer technology, and public policy.

The Parties have expressed a willingness to leverage their combined strengths among the scientific disciplines, with goals in applied research, educational, and training activities. The Parties are committed to developing and applying nanotechnology tools in the battle against multiple diseases and in the development of cross-cutting technologies.

**III. PARTICIPATION OF PARTIES**

The Parties agree to the following, to be developed and pursued through separate written agreements as needed:

1. To form a subcommittee of the ANH made up of representatives of the Parties and other key stakeholders to: (a) recommend program and funding priorities, implement programs, and oversee the activities to fulfill the purpose of this MOU as set forth in Paragraph I above; and (b) to form task/program/project-specific working groups, as needed, to develop strategic program plans, establish project selection criteria, develop feasible funding and implementation plans for programs/projects, including leveraging resources and expertise from multiple sources including the private sector, academia, professional organizations and others.
2. To share information and data, to the extent permitted by protocol and by State and Federal law, and provide access to best practices and know-how produced from activities under this MOU, in a timely manner and as appropriate. Such shared information may, if deemed permissible under applicable State and Federal statutes, include assessment tools for use during the FDA's regulatory evaluation and during guidance development to facilitate medical product development, characterization approaches, and best practices to: (a) support understanding and resolution of potential implications of nanotechnology-based products for clinical application; (b) facilitate the development of measurement methods and standard protocols appropriate to innovative technologies; and (c) facilitate transfer of science and engineering discovery and development to the clinic through careful linkage with the measurement science and standard programs and regulatory science and policy development.
3. To develop and implement separate programs and agreements, within the framework of this MOU and to the extent time, resources, and applicable State and Federal statutory and regulatory requirements permit, to allow:
  - a. Development and refinement of the preclinical and early clinical pathway(s) for nanotechnology-based drugs, biologics, devices and combination products to guide technology development leading to medical products;

## MOU# 225-07-8006

- b. Development and validation of standards, risk/benefit analyses and other evaluative tools to identify risks and assess safety and efficacy in newly emerging nanoengineered products;
  - c. Generation of data and best practices that will be publicly available e.g. protocols, assay cascades, and other pre-competitive tools developed collaboratively by the Parties, and that may guide further advancement in the field of nanotechnology;
  - d. Development, validation, and assessment of assays and other appropriate test methods, with close review and input from all Parties prior to standardization and validation of said assays;
  - e. Development of joint translational research programs that also support academic scientists, trainees and scientific fellows identified under joint training programs, and under the FDA's Critical Path Initiative, to perform research at the respective facilities of the Parties and in collaboration with respective scientists and staff comprising the Parties, as well as potential research collaborations with other organizations; and
  - f. Representation for each Party at jointly held meetings and other scientific conferences, as applicable and appropriate.
4. To serve as an infrastructure for fostering additional concepts or ideas involving joint projects or integrated approaches to science or technology development specifically aimed at developing nanoengineered products. To achieve this goal, and as permissible by State and Federal law, designated representatives from the Parties will meet at least quarterly to review progress and address new opportunities for collaboration and associated sources of funding. Such opportunities will be formally presented to the ANH for approval and implementation. As needed and as permitted by State and Federal law, technical and programmatic advisory working groups made up of employees from the respective Parties may be assembled to make formal recommendations for collaboration. Any individual project(s), group(s), or committees established pursuant to this MOU shall be defined in separate written agreements which will also outline procedures and processes for such project(s), group(s) or committees. Any such separate agreements must be approved in writing by authorized representatives of each of the parties involved. Any separate written agreement must be in compliance with all applicable State and Federal law, and FDA shall ensure its participation in any such separate agreements is permissible under applicable statutory and regulatory requirements. Such agreements shall set forth at a minimum, the scope of work; tasks, deliverables (if any) and delivery dates; anticipated products and outcomes; periods of performance; and any other appropriate and necessary aspects of project(s).
5. In addition to the activities set forth herein, the Parties may, as resources and State and Federal law permit, collectively develop and validate standards, nomenclature, assessment tools, and toxicology approaches to facilitate and accelerate the development of, and the evidence base for, new diagnostics and medical products that incorporate nanotechnology. The Parties may also develop educational programs and tools, and publications to make information and data generated widely available to patients, clinicians, and researchers. Any such activities, if deemed permissible under applicable

**MOU# 225-07-8006**

State and Federal statutes and regulations, shall be developed under, and governed by, separate written agreements signed by the Parties.

**IV. RESOURCES**

Sources of support for projects under this MOU will be governed by State and Federal law and applicable policies and procedures. The terms for such support will be set forth in the specific written agreements for each project.

**V. GENERAL PROVISIONS**

1. Nothing in this MOU alters the statutory authorities or obligations of FDA. This MOU is intended to facilitate cooperative efforts among the Parties in the area of nanotechnology.
2. U.S. Federal law and to the extent applicable the laws of the State of Texas govern this MOU for all purposes, including, but not limited to, determining the validity of the MOU, the meaning of its provisions, and the rights, obligations, and remedies of the Parties.
3. Proprietary and/or nonpublic information will not be disclosed under this MOU, unless such disclosure is governed by appropriate, separate, written Confidentiality Disclosure Agreements (CDAs), and to the extent such disclosure is permitted by State and Federal law.
4. It is understood that, although the Parties have mutual interests, there may be opportunities for independent collaborations and activities outside the scope of this MOU, but which are within the scope of the Parties' respective missions. As such, the Parties may, as appropriate, enter into independent negotiations and agreements with prospective partner/s without any effect on this MOU.
5. Materials and data being analyzed/studied under the terms and conditions of this MOU may be shared among the Parties only if permitted by applicable State and Federal law and any such sharing of materials and data will be governed by separate written Material and Data Transfer Agreements (MDTA). Parties will ensure that their participation in any MDTA is appropriate and permissible under applicable State and Federal law.
6. Rights to inventions or intellectual property developed will be addressed in separate written development and implementation agreements among the Parties. To the extent there is FDA participation in any projects related to development of any product, invention or property developed, such activities will be governed by applicable Federal law. This MOU does not license or convey any intellectual property or inventions owned or managed by any of the Parties to any other Party or to the ANH.
7. Any notice or other communication required or permitted under this MOU shall be in writing and will be deemed effective on the date it is received by the receiving Party.
8. FDA participation in this MOU is governed by Federal statutes and regulations.

## MOU# 225-07-8006

**VI. TERM, TERMINATION AND MODIFICATIONS**

1. This MOU constitutes the entire agreement among the Parties and to the matters herein. There are no representations, warranties, agreements, or understandings, expressed or implied, written or oral, among the Parties relating to the subject matter of this MOU that are not fully expressed herein.
2. This MOU may be modified only upon the mutual written consent of all Parties. Modifications must be signed by the original signatories to this MOU, or by their designees or successors. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this MOU.
3. This MOU, when accepted by the Parties, will remain in effect for three (3) calendar years from the Effective Date, unless modified or terminated.
4. Any Party to this MOU may terminate its participation by written notice by at any time, with or without cause, and without incurring any liability or obligation. Such written notice shall be given by the terminating Party to the other Parties at least 60 days prior to the date of actual termination.

**VIII. CONTACTS**

Notices or formal communications pursuant to this MOU shall be sent in writing by personal delivery, overnight delivery, facsimile telecommunication with confirmatory receipt, or certified or registered mail, return receipt requested, to the following contact for each Party:

For FDA: Wendy R. Sanhai, Ph.D.  
Senior Scientific Advisor  
Office of the Commissioner, FDA  
5600 Fishers Lane, Suite 14 B-45, HZ-1  
Rockville, MD. 20857  
Phone: (301) 827-7867, Fax: (301) 827-5891  
Email: wendy.sanhai@fda.hhs.gov

With a copy to: Chekesha S. Clingman, Ph.D.  
LCDR, USPHS  
Senior Scientific Program Manager  
Office of the Commissioner, FDA  
5600 Fishers Lane, Suite 6A-08  
Rockville, MD 20857  
Phone: (301) 827-4044, Fax: (301) 827-5891  
Email: chekesha.clingman@fda.hhs.gov



**MOU# 225-07-8006**

For ANH: Mauro Ferrari, Ph.D.  
President, Alliance for NanoHealth  
1825 Pressler, Suite 537D  
Houston, TX 77031  
Phone: (713) 500-2444, Fax: (713) 500-2462  
Email: mauro.ferrari@uth.tmc.edu

For BCM: William T. Butler, M.D.  
Interim President, Baylor College of Medicine  
One Baylor Plaza  
Houston, Texas 77030  
Fax Number: (713) 798-8811

With a copy to: Office of General Counsel  
Baylor College of Medicine  
One Baylor Plaza, Room 106A  
Houston, Texas 77030  
Fax Number: (713) 798-6368

For Rice: David W. Leebron  
President, Rice University  
6100 Main Street, MS-1  
Houston, Texas 77005  
Fax Number (713) 348-5271

With a copy to: Office of General Counsel  
Rice University  
6100 Main Street, MS-94  
Houston, Texas 77005  
Fax Number (713) 348-5464

For Texas A&M: Nancy W. Dickey, M.D.  
President, Texas A & M Health Science Center  
John B. Connally Building, 7<sup>th</sup> Floor  
301 Tarrow  
College Station, Texas 77840-7896  
Fax No. (979) 458-7202

With a copy to: Chief Legal Officer  
Texas A & M Health Science Center  
John B. Connally Building, 7<sup>th</sup> Floor  
301 Tarrow  
College Station, Texas 77840-7896  
Fax No. (979) 458-7202

---

**MOU# 225-07-8006**

For UH: Dr. Renu Khator  
Chancellor, UH System  
President, University of Houston  
212 E. Cullen Building  
Houston, Texas 77204-2018  
713-743-8820  
713-743-8837 (fax)

With a copy to: Vice Chancellor for Legal Affairs, UH System  
Vice President for Legal Affairs, UH  
General Counsel, UH System/UH  
311 E. Cullen Building  
Houston, Texas 77204-2028  
Phone: (713) 743-0949  
Fax: (713) 743-0948

For UTMDACC: John Mendelsohn, M.D.  
President, University of Texas  
M. D. Anderson Cancer Center  
1515 Holcombe Blvd., Box 91  
Houston, Texas 77030  
Fax Number: (713) 799-2210

With a copy to: Senior Vice President for  
Administrative Services and Chief Legal Officer  
The University of Texas  
M. D. Anderson Cancer Center  
1515 Holcombe Boulevard, Box 537  
Houston, Texas 77030  
Fax Number: (713) 799-8801

For UTMB: David L. Callender, M.D.  
President, University of Texas  
Medical Branch at Galveston  
301 University Blvd.  
Galveston, Texas 77555-0129  
Fax Number: (409) 772-5064

With a copy to: Department of Legal Affairs  
301 University Blvd.  
Galveston, Texas 77555-0124  
Fax Number (409) 772-6049

---

**MOU# 225-07-8006**

For UTHSCH: Larry R. Kaiser, M.D.  
President, The University of Texas Health Science  
Center at Houston  
7000 Fannin, Suite 1700  
Houston, Texas 77030  
Fax Number (713) 500-3026

With a copy to: Office of Legal Affairs  
The University of Texas Health Science  
Center at Houston  
7000 Fannin Street, Suite 1460  
Houston, Texas 77030  
Fax Number: (713) 500-3275

For TMHRI: Michael W. Lieberman, M.D., Ph.D.  
President & CEO  
The Methodist Hospital Research Institute  
6565 Fannin Street, B490  
Houston, Texas 77030  
Fax Number: (713) 441-3886

With a copy to: Vice President, Legal Services  
The Methodist Hospital System  
6565 Fannin Street, D200  
Houston, Texas 77030  
Fax Number: (713) 793-7092

The Parties shall notify each other of any change of address or change of named contact by written notice. All notices shall be effective upon date of receipt.

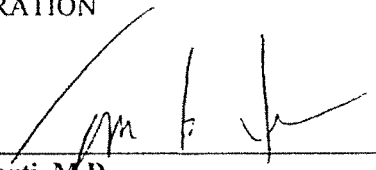
**Signatures begin on next page**

MOU# 225-07-8006

## SIGNATURES OF RESPONSIBLE PARTIES:

We, the undersigned, agree to abide by the terms and conditions of this MOU.

APPROVED AND ACCEPTED FOR THE UNITED STATES FOOD AND DRUG  
ADMINISTRATION

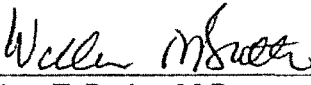
  
\_\_\_\_\_  
Frank M. Torti, M.D.

~~Principal Deputy Commissioner and Chief Scientist~~  
Food and Drug Administration

Date

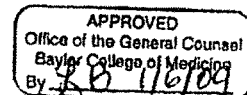
2/11/09*Acting Commissioner*

APPROVED AND ACCEPTED FOR THE BAYLOR COLLEGE OF MEDICINE

  
\_\_\_\_\_  
William T. Butler, M.D.

Interim President, Baylor College of Medicine

Date

1/9/09

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS HEALTH SCIENCE  
CENTER AT HOUSTON

\_\_\_\_\_  
Larry R. Kaiser, M.D.

President, The University of Texas Health Science  
Center at Houston

Date

\_\_\_\_\_

MOU# 225-07-8006

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We, the undersigned, agree to abide by the terms and conditions of this MOU.

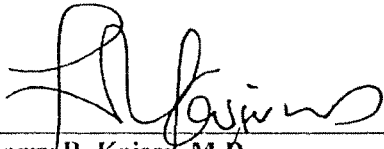
APPROVED AND ACCEPTED FOR THE UNITED STATES FOOD AND DRUG  
ADMINISTRATION

\_\_\_\_\_  
Date \_\_\_\_\_  
Frank M. Torti, M.D.  
~~Principal Deputy Commissioner and Chief Scientist~~ *Acting Commissioner*  
Food and Drug Administration

APPROVED AND ACCEPTED FOR THE BAYLOR COLLEGE OF MEDICINE

\_\_\_\_\_  
Date \_\_\_\_\_  
William T. Butler, M.D.  
Interim President, Baylor College of Medicine

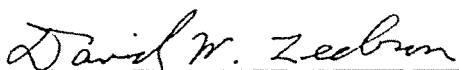
APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS HEALTH SCIENCE  
CENTER AT HOUSTON

  
\_\_\_\_\_  
Larry R. Kaiser, M.D.  
President, The University of Texas Health Science  
Center at Houston

Date 12/12/08

MOU# 225-07-8006

APPROVED AND ACCEPTED FOR WILLIAM MARSH RICE UNIVERSITY

  
\_\_\_\_\_  
**David W. Leebron**  
President, Rice University

Date Jan. 16, 2009APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS M.D. ANDERSON  
CANCER CENTER

\_\_\_\_\_  
**John Mendelsohn, M.D.**  
President, The University of Texas  
M.D. Anderson Cancer Center

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR UNIVERSITY OF HOUSTON

\_\_\_\_\_  
**Renu Khator, Ph.D.**  
President, University of Houston

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS MEDICAL BRANCH  
AT GALVESTON

\_\_\_\_\_  
**David L. Callender, M.D.**  
President, The University of Texas Medical  
Branch at Galveston

Date \_\_\_\_\_

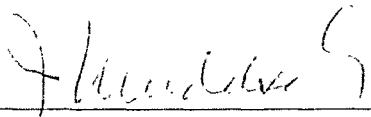
MOU# 225-07-8006

APPROVED AND ACCEPTED FOR WILLIAM MARSH RICE UNIVERSITY

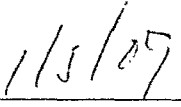
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**David W. Leebron**  
President, Rice University

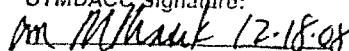
Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS M.D. ANDERSON  
CANCER CENTER

  
\_\_\_\_\_  
**John Mendelsohn, M.D.**  
President, The University of Texas  
M.D. Anderson Cancer Center

Date \_\_\_\_\_

  
Reviewed and Approved by  
UTMDACC Legal Services for  
UTMDACC Signature:

  
12-18-08

APPROVED AND ACCEPTED FOR UNIVERSITY OF HOUSTON

\_\_\_\_\_  
**Renu Khator, Ph.D.**  
President, University of Houston

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS MEDICAL BRANCH  
AT GALVESTON

\_\_\_\_\_  
**David L. Callender, M.D.**  
President, The University of Texas Medical  
Branch at Galveston

Date \_\_\_\_\_



MOU# 225-07-8006

APPROVED AND ACCEPTED FOR WILLIAM MARSH RICE UNIVERSITY

\_\_\_\_\_  
Date \_\_\_\_\_  
**David W. Leebron**  
President, Rice University

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS M.D. ANDERSON  
CANCER CENTER

\_\_\_\_\_  
Date \_\_\_\_\_  
**John Mendelsohn, M.D.**  
President, The University of Texas  
M.D. Anderson Cancer Center

APPROVED AND ACCEPTED FOR UNIVERSITY OF HOUSTON

*dhc* *Renu Khator* \_\_\_\_\_  
Date \_\_\_\_\_  
**Renu Khator, Ph.D.**  
President, University of Houston

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS MEDICAL BRANCH  
AT GALVESTON

\_\_\_\_\_  
Date \_\_\_\_\_  
**David L. Callender, M.D.**  
President, The University of Texas Medical  
Branch at Galveston

MOU# 225-07-8006

APPROVED AND ACCEPTED FOR WILLIAM MARSH RICE UNIVERSITY

\_\_\_\_\_  
**David W. Leebron**  
President, Rice University

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS M.D. ANDERSON  
CANCER CENTER

\_\_\_\_\_  
**John Mendelsohn, M.D.**  
President, The University of Texas  
M.D. Anderson Cancer Center

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR UNIVERSITY OF HOUSTON

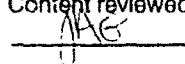
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**Renu Khator, Ph.D.**  
President, University of Houston

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE UNIVERSITY OF TEXAS MEDICAL BRANCH  
AT GALVESTON

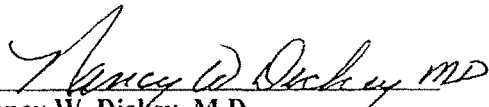
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**David L. Callender, M.D.**  
President, The University of Texas Medical  
Branch at Galveston

Date **DEC 19 2008**

Content reviewed  


MOU# 225-07-8006

APPROVED AND ACCEPTED FOR TEXAS A&amp;M HEALTH SCIENCE CENTER

  
\_\_\_\_\_  
Nancy W. Dickey, M.D.  
President, Texas A&M Health Science Center

Date 1/20/09APPROVED AND ACCEPTED FOR THE METHODIST HOSPITAL RESEARCH  
INSTITUTE

\_\_\_\_\_  
Michael W. Lieberman, M.D., Ph.D.  
President & CEO, The Methodist Hospital  
Research Institute

Date \_\_\_\_\_


MOU# 225-07-8006

APPROVED AND ACCEPTED FOR TEXAS A&M HEALTH SCIENCE CENTER

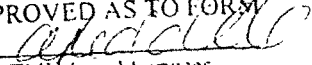
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Nancy W. Dickey, M.D.  
President, Texas A&M Health Science Center

Date \_\_\_\_\_

APPROVED AND ACCEPTED FOR THE METHODIST HOSPITAL RESEARCH  
INSTITUTE

  
\_\_\_\_\_  
Michael W. Lieberman, M.D., Ph.D.  
President & CEO, The Methodist Hospital  
Research Institute

Date 12/19/08

APPROVED AS TO FORM  
By   
TMH Legal Services

[FR Doc. E9-5492 Filed 3-12-09; 8:45 am]

BILLING CODE 4160-01-C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-N-0664]

#### Clinical Trials Endpoints for Acute Graft-Versus-Host Disease After Allogeneic Hematopoietic Stem Cell Transplantation; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) and National Institutes of Health (NIH) in co-sponsorship with the Center for International Blood and Marrow Transplantation Research (CIBMTR) and the American Society for Blood and Marrow Transplantation (ASBMT) are announcing a public workshop entitled "Clinical Trials Endpoints for Acute Graft-Versus-Host Disease (GVHD) After Allogeneic Hematopoietic Stem Cell Transplantation." This is a 1-day workshop for academics, government researchers, clinical trial experts, government regulators, and industry representatives. The purpose of the public workshop is to review the data that will serve as the foundation for protocol design and clinical trial evidence-based endpoints intended to support the approval of new drugs or biologics to prevent or treat acute GVHD. The public workshop also will inform FDA and assist investigators in facilitating clinical development programs for products to prevent or treat acute GVHD indications.

**Date and Time:** The public workshop will be held on May 19, 2009, from 8:30 a.m. to 5 p.m.

**Location:** The public workshop will be held at the Hilton Washington DC/ Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Overnight accommodations can be booked at the Hilton under group code "MCW" for the conference rate by calling 1-800-445-8667 or by using the Reservation Web site at <http://www.hilton.com/en/hi/groups/personalized/IADMRHF-MCW-20090518/index.jhtml>. Accommodation agreement courtesy of CIBMTR. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

**Contact Person:** Leslie Haynes, Center for Biologics Evaluation and Research

(HFM-43), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-2000, FAX: 301-827-3079; e-mail: [CBERTraining@fda.hhs.gov](mailto:CBERTraining@fda.hhs.gov) (Subject line: Acute GVHD Workshop).

**Registration:** Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the Contact Person by April 18, 2009. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 8:15 a.m.

If you need special accommodations due to a disability, please contact Leslie Haynes at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** At the present time, there are no drugs or biologics approved for prevention or treatment of acute GVHD. Development of products to prevent or treat acute GVHD poses several challenges. First, the market is not very big, so there is little incentive for investment if the process is cumbersome; second, analyses of these studies are complicated by confounding factors; and third, there is a lack of evidence-based endpoints that can be used to demonstrate a clinically meaningful benefit of any therapy.

The Center for Biologics Evaluation and Research is the FDA Center with regulatory responsibility for vaccines, blood and blood products, allergenic products, and therapies involving cells, tissues, and genes. The mission of FDA is to protect and enhance the public health including the safety and purity of medical products and the Nation's blood supply. The purpose of this event is to review the data that can be used to develop evidence-based endpoints for clinical trials targeting acute GVHD.

ASBMT is a professional organization that promotes advancement of the field of blood and bone marrow transplantation. Its members are both in clinical practice and in research.

CIBMTR is a research network comprised of the National Marrow Donor Program® and the International Bone Marrow Transplant Registry and Autologous Blood and Marrow Transplant Registry. Its activities include support for the National Heart, Lung and Blood Institute (NHLBI)-funded Blood and Marrow Transplantation Clinical Trials Network and Health Resources and Services Administration's C.W. Bill Young Cell Transplantation Program. The goals of the CIBMTR include defining key areas

for future research in collaboration with leading scientists, physicians, and others in the blood and marrow transplant community; the design and implementation of clinical studies; and making available research resources including a clinical database of related blood and marrow transplants, along with repositories of matched tissue samples from transplant recipients and their donors.

The NHLBI, National Institute of Allergy and Infectious Diseases (NIAID), National Cancer Institute (NCI), and Office of Rare Diseases (ORD) are at the National Institutes of Health (NIH), the primary Federal agency for conducting and supporting medical research. NIH's mission is science in pursuit of fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to extend healthy life and reduce the burdens of illness and disability.

The public workshop will feature presentations by FDA, CIBMTR, and members of ASBMT. The topics to be discussed include the following: (1) Regulatory requirements for clinical trials, (2) extant data which support the endpoints currently used in clinical trials, (3) data analyses to support the validity of the proposed endpoints, (4) statistical approaches to minimize confounding factors in stem cell transplantation study analysis, (5) biomarkers for acute GVHD, and (6) patient-reported outcomes for acute GVHD prevention and treatment trials.

**Presentations:** Presentations from the public workshop will be maintained on the CIBMTR's Web site for at least 1 year.

Dated: March 6, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-5496 Filed 3-12-09; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB Review; Comment Request; Women's Health Initiative Observational Study

**Summary:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection

listed below. This proposed information collection was previously published in the **Federal Register** on December 30, 2008, page 79889–79890 and allowed 60-days for public comment. One comment was received and appropriate response was made. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995 unless it displays a current valid OMB control number.

**Proposed Collection:** Title: Women's Health Initiative (WHI) Observational Study. **Type of Information Collection Request:** REVISION: OMB No. 0925–0414, Expiration date: 05/31/2009. **Need and Use of Information Collection:** This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received

clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. Continuation of follow-up years for ascertainment of medical history update forms will provide essential data for outcomes assessment for this population of aging women. **Frequency of Response:** Annually. **Affected Public:** Individuals and physicians. **Type of Respondents:** Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

#### ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Observational Study Participants	63,230	1.1	.3383	23,509
Next of Kin <sup>1</sup>	1,163	1	.083	97
Health Care Providers <sup>1</sup>	9	1	.083	.77
Total	64,402	.....	.....	23,607

<sup>1</sup> Annual burden is placed on health care providers and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

The annualized cost burden to respondents is estimated at \$377,725. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

**Request for Comments:** Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or by

fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plan and instruments, contact: Shari Eason Ludlam, Project Officer, Women's Health Initiative Program Office, 6701 Rockledge Drive, 2 Rockledge Centre, Suite 10018, MSC 7936, Bethesda, MD 20892–7936, or call (301) 402–2900 or E-mail your request, including your address to: [ludlams@mail.nih.gov](mailto:ludlams@mail.nih.gov).

**Comments Due Date:** Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: March 2, 2009.

**Michael S. Lauer,**

Director, Division of Prevention and Population Sciences, NHLBI, National Institutes of Health.

Dated: March 3, 2009.

**Suzanne Freeman,**

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. E9–5521 Filed 3–12–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Gene Signature for Predicting Hepatocellular Carcinoma Patient Prognosis**

*Description of Technology:* A progressive sequence of somatic mutations and epigenetic changes of oncogenes or tumor suppressor genes are believed to cause tumor development. However, high genomic instability in tumors causes the accumulation of genomic aberrations that do not contribute to tumor progression. Therefore it is important to distinguish between “driver” mutations which are functionally important and “passenger” mutations which do not provide a selective advantage to the tumor cells.

The current invention describes a driver gene signature for predicting survival in patients with hepatocellular carcinoma (HCC). The gene signature includes ten HCC-associated genes, and the NIH researchers further discovered that a decrease in DNA copy number or mRNA expression of some genes is associated with a poor prognosis in HCC tumors, while a decrease in DNA copy number or mRNA expression of a few other genes is associated with a good prognosis.

Available for licensing is a method of predicting the prognosis of a patient diagnosed with HCC by detecting expression of one of more HCC-associated genes, and a method of identifying an agent for use in treating HCC.

*Applications:* Prognosis for hepatocellular carcinoma (HCC) patient survival; Potential new method to identify therapeutic treatment for HCC patients.

*Market:* Hepatocellular carcinoma (HCC) is the most frequent malignant tumor in the liver and the third leading cause of cancer death worldwide. Systemic chemotherapy has been shown to be ineffective and tumor recurrence rate after surgical resection is high due to relapse and metastasis. Therefore, the development of new drugs will be crucial to prevent relapse and to prolong patient survival.

*Development Status:* Early-stage development.

*Inventors:* Xin Wei Wang and Stephanie Roessler (NCI).

*Patent Status:* U.S. Provisional Application No. 61/198,813 filed 10 Nov 2008 (HHS Reference No. E-024-2009/0-US-01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Betty Tong, Ph.D.; 301-594-6565; [tongb@mail.nih.gov](mailto:tongb@mail.nih.gov).

*Collaborative Research Opportunity:* The National Cancer Institute, Center for

Cancer Research, Laboratory of Human Carcinogenesis, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Gene Signature for Predicting Hepatocellular Carcinoma Patient Prognosis. Please contact John D. Hewes, Ph.D. at 301-435-3121 or [hewesj@mail.nih.gov](mailto:hewesj@mail.nih.gov) for more information.

**Lasonolide Compounds as Reagents for Inducing Premature Chromosome Condensation and Methods of Treating Cancer**

*Description of Technology:* Lasonolide A is a natural product initially isolated from an extract of the shallow water Caribbean marine sponge. The chemical structure of lasonolide A was identified in 2002, and it was chemically synthesized in 2007. The current invention discloses the discovery that lasonolide A may be used as a new reagent for inducing premature chromosome condensation in non-dividing cells; and a novel anti-proliferative and anti-metastatic agent for cancer treatment. Currently, it is difficult to analyze the cytogenetic composition of the genome of non-dividing cells because the chromosomes are loosely distributed in the nucleus, lasonolide A may be useful for performing cytogenetic studies in cells by inducing premature chromosome condensation without inducing mitosis. In addition, the invention also reveals that lasonolide A inhibits cancer cell motility. As such, lasonolide A may be used as an anti-cancer agent by itself or in combination with other anti-cancer agents such as inhibitors of topoisomerases.

*Applications:* A new reagent for inducing premature chromosome condensation in non-dividing cells; a novel anti-cancer agent.

*Market:* Cancer continues to be a burden to the public health of Americans. After heart disease, cancer is the most common cause of death in the United States. For 2008, it was estimated that about 565,650 Americans were expected to die of cancer. The incidence of cancer has been dropping over the years but it is estimated that over 1.4 million Americans would be diagnosed with cancer in 2008. Therefore, there is a continued need for the development of new therapies to effectively treat this disease.

*Development Status:* Early-stage development.

*Inventors:* Yves G. Pommier (NCI) et al.

*Patent Status:* U.S. Provisional Application No. 61/137,193 filed 28 Jul

2008 (HHS Reference No. E-247-2008/0-US-01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Betty Tong, Ph.D.; 301-594-6565; [tongb@mail.nih.gov](mailto:tongb@mail.nih.gov).

*Collaborative Research Opportunity:* The National Cancer Institute, Center for Cancer Research, Laboratory of Molecular Pharmacology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Lasonolide Compounds as Reagents for Inducing Premature Chromosome Condensation and Methods of Treating Cancer. Please contact John D. Hewes, Ph.D. at 301-435-3121 or [hewesj@mail.nih.gov](mailto:hewesj@mail.nih.gov) for more information.

**Increased Image Quality for Early Colon Polyp Detection**

*Description of Technology:* The invention relates to a method for improving the specificity and sensitivity of computer tomographic colonoscopy (CTC) computer aided detection (CAD). Currently CTC CAD programs are capable of delivering high sensitivity and low false positive results when used to detect large polyps of 1 cm or greater in diameter. However, CTC CAD is not as effective at detecting medium-sized polyps (6–9 mm in diameter) as it demonstrates lower sensitivities and higher false positives in this range. Since early polyp detection is critical to the survival of patients with colon cancer, the ability to accurately detect medium size polyps could be advantageous to the outcome of colon cancer treatment.

The invention uses a wavelet-based analysis to distinguish true polyps from false positives in CTC images. The steps involved include generating a 2D projection image, computing features of the 2D images from their Haar wavelet coefficients, applying the feature selection algorithm, and training a classifier using the selected features to classify CTC CAD.

Using this technology, it will be possible to create high quality images for viewing the colon surface in 3D with reduced false positives in the medium-sized range for colon polyps. The technology can also be used to locate anomalies in both medical and non-medically related image applications such as endoscopy, microscopy, and photography.

*Applications:* High quality images for early colon polyp detection; Sensitive and efficient colon cancer diagnosis; Locating anomalies in several different image applications.

*Development Status:* Early stage.

*Inventors:* Ronald M. Summers *et al.* (CC)

***Publications:***

1. J Li, R Van Uitert, J Yao, N Petrick, M Franaszek, A Huang, RM Summers. Wavelet method for CT colonography computer-aided polyp detection. *Med Phys.* 2008 Aug;35(8):3527–3538.

2. S Greenblum, J Li, A Huang, RM Summers. Wavelet analysis in virtual colonoscopy. *Proc. SPIE*, Vol. 6143, 614336 (March 13, 2006); doi:10.1117/12.655680.

***Patent Status:*** U.S. Patent Application No. 11/685,127 filed 12 Mar 2007 (HHS Reference No. E–314–2006/0–US–02); No foreign rights available.

***Licensing Status:*** Available for licensing.

***Licensing Contact:*** Jeffrey A. James, Ph.D.; 301–435–5474; jeffreyja@mail.nih.gov.

**Microdissection and High-Throughput Analysis of Biological Samples**

***Description of Technology:*** A variety of techniques have been used to microdissect specific cells or cell populations from a histological sample under direct microscopic visualization. Original microdissection techniques involved painstaking (and sometimes clumsy) manual dissection using needles or other micro-manipulation devices to isolate individual cells based on visible, histological characteristics.

The subject technology is a method of performing specific target activated transfer from a biological sample (*i.e.*, tissue) for analysis using a device system that can be automated for high throughput analysis. The method employs a localized reagent, such as an absorptive stain, that specifically determines the microadhesion of desired cellular material in a tissue sample to a transfer surface such as a thermoplastic polymer film. The energy from a light or heat source causes the microadhesion of the target cells or cell populations to the thermoplastic transfer surface. Subsequent separation of the film from the tissue section selectively removes the adhered target from the tissue section. The transfer surface is activated from within the target to adhere the target to the transfer surface, for example by heating the target to adhere or to a thermoplastic transfer surface. Such *in situ* activation can be achieved by exposing the biological sample to an immunoreagent that specifically binds to the target (or a component of the target). The immunoreagent can alter the transfer surface directly (for example with a heat generating enzyme carried by the immunoreagent), or indirectly (for example by changing a characteristic of

the target). In some embodiments, the immunoreagent deposits a precipitate in the target that increases its light absorption relative to surrounding tissue, such that the biological specimen can be exposed to light to selectively heat the target. Alternatively, the immunoreagent is an immunofluorescent agent that carries a fluorophore that absorbs light and emits heat.

***Applications:*** Microdissection of specific cells or cell populations from a histological sample; High throughput analysis of biological samples.

***Advantages:*** Automated system for high throughput microdissection and analysis; Does not require a visual detection step.

***Development Status:*** *In vitro* data can be provided upon request.

***Inventors:*** Michael R. Emmert-Buck (NCI), Robert F. Bonner (NICHD), Michael A. Tangrea (NCI), Thomas J. Pohida (CIT), Rodrigo F. Chuaqui (NCI).

***Patent Status:***

International Patent Application No. PCT/US03/23317 filed 23 July 2003, which published as WO 2004/068104 on 12 Aug 2004 (HHS Reference No. E–113–2003/0–PCT–02),

U.S. Patent Application No. 10/543,218 filed 22 Jul 2005 (HHS Reference No. E–113–2003/0–US–03),

Canadian Patent Application No. 2513646 filed 23 Jul 2003 (HHS Reference No. E–113–2003/0–CA–05),

Australian Patent Application No. 2003256803 filed 23 Jul 2003 (HHS Reference No. E–113–2003/0–AU–04),

U.S. Patent Application No. 11/202,848 filed 12 Aug 2005 (HHS Reference No. E–113–2003/1–US–01).

***Licensing Status:*** Available for licensing.

***Licensing Contact:*** Kevin W. Chang, Ph.D.; 301–435–5018, changke@mail.nih.gov,

***Collaborative Research Opportunity:***

The National Cancer Institute, Center for Cancer Research, Laboratory of Pathology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Target Activated Microtransfer—Expression Microdissection (xMD). Please contact John D. Hewes, Ph.D. at 301–435–3121 or hewesj@mail.nih.gov for more information.

**Use of Anthrax Lethal Factor To Treat Cancer and Screening Methods for MAPK Kinase Protease Activity**

***Description of Technology:*** Anthrax toxin, produced by *Bacillus anthracis*, is composed of three proteins: Protective antigen (PA), edema factor (EF), and

lethal factor (LF). PA by itself has little or no toxic effect upon cells, but serves to bind cell surface receptors and mediate the entry of EF and LF into the cell. EF has been identified as an adenylate cyclase and together with PA forms a toxin (edema toxin; EdTx) which can induce edema formation when injected subcutaneously. LF and PA together form a toxin (lethal toxin; LeTx) which can cause rapid lysis of certain macrophage-derived cell lines *in vitro* as well as death when injected intravenously.

Indirect evidence had suggested that LF was a metalloprotease. However, the intracellular target of LF remained unknown until recently when NIH scientists discovered that LF proteolytically inactivates mitogen activated protein kinase kinase 1 and 2 (MAPKK1, 2). Using oocytes of the frog *Xenopus laevis* as well as tumor derived NIH3T3 (490) cells expressing an effector domain mutant form of the human V12HaRas oncogene these scientists demonstrated that LF induced proteolysis of MAPKK 1 and 2, resulting in their irreversible inactivation. MAPKK 1 and 2 are components of the mitogen activated protein kinase (MAPK) signal transduction pathway, an evolutionarily conserved pathway that controls cell proliferation and differentiation in response to extracellular signals and also plays a crucial role in regulating oocyte meiotic maturation. Further, the MAPK pathway has been shown to be constitutively activated in many primary human as well as in tumor-derived cell lines. Consistent with this, treatment of V12Ha-Ras transformed NIH 3T3 cells with LeTx inhibits cell proliferation and causes their reversion to a non-transformed phenotype.

This invention specifically relates to *in vitro* and *ex vivo* methods of screening for modulators, homologues, and mimetics of LF mitogen activated protein kinase kinase (MAPKK) protease activity. Applications for this technology could be:

- A novel tool (LF) for the study of the cellular role of the MAPK pathway in normal or tumor cells.

- Investigation of LF for developing inhibitors for cancer therapy. By analyzing structural-functional relationships, additional compounds with improved specificity, increased potency, and reduced toxicity can be generated. Mimetics which block MAPKK activity or the determination of mechanisms of regulation of proteases that target MAPKK at or near the same site targeted by LF could be developed.

- A protease-based assay for LF by using a peptide to test for LF cleavage.



There is no commercial test for anthrax. This assay could be used for testing soldiers for anthrax exposure. Characterization of the interaction between LF and MAPKK at the amino acid level may lead to the generation of inhibitors which may prove useful in treating anthrax.

*Inventors:* Nicholas S. Duesbery (NCI), Craig Webb (NCI), Stephen H. Leppla (NIDCR), George F. Vande Woude (NCI).

*Patent Status:*

U.S. Patent 6,485,925 issued 26 Nov 2002 (HHS Reference No. E-068-1998/0-US-06).

U.S. Patent 6,893,835 issued 17 May 2005 (HHS Reference No. E-068-1998/0-US-07).

U.S. Patent 6,911,203 issued 28 Jun 2005 (HHS Reference No. E-068-1998/0-US-08).

U.S. Patent 7,056,693 issued 06 Jun 2006 (HHS Reference No. E-068-1998/0-US-10).

U.S. Patent 7,183,071 issued 27 Feb 2007 (HHS Reference No. E-068-1998/0-US-11).

International rights available.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Surekha Vathyam, Ph.D.; 301-435-4076; [vathyams@mail.nih.gov](mailto:vathyams@mail.nih.gov).

Dated: March 5, 2009.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. E9-5418 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Orthopaedics and Skeletal Biology.

*Date:* March 20, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435-1215, [mcdonald@csr.nih.gov](mailto:mcdonald@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Ligament/Tendon Repair and Replacement.

*Date:* March 26, 2009.

*Time:* 10 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301-496-8551, [holdenjo@csr.nih.gov](mailto:holdenjo@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of HIV/AIDS Related SBIR/STTR Applications.

*Date:* April 1, 2009.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301-435-1775, [rubertm@csr.nih.gov](mailto:rubertm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BMIT/MEDI Member Conflict—Imaging.

*Date:* April 2, 2009.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435-1174, [dhindsad@csr.nih.gov](mailto:dhindsad@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical

Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5139 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 26, 2009, 8 a.m. to February 28, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 6, 2009, 74 FR 6292-6294.

The meeting will be held March 25, 2009 to March 27, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 5, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5344 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel. "Dyslexia Study in Rats".

*Date:* April 6, 2009.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496-1485.

*changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5420 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel. Best Pharmaceuticals for Children Act Data Coordinating Center (NIH-NICHD-OPPB-09-10).

*Date:* April 6, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892-9304, (301) 435-6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5421 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Translating Basic Behavioral and Social Science Discoveries into Interventions to Reduce Obesity.

*Date:* April 7, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crystal City Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Mark Roltsch, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892-7924, 301-435-0287, *roltschm@nhlbi.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Ancillary Studies in Clinical Trials.

*Date:* April 7, 2009.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301-435-0287, *carolko@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Continuing Education Training Grants (T15's).

*Date:* April 10, 2009.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Keary A Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892-7924, (301) 435-2222, *copeka@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Airway Smooth Muscle Function and Targeted Therapeutics in Human Asthma.

*Date:* April 15, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Shelley S. Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892-7924, 301-435-0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 6, 2009

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5424 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Maternal and Child Health in Poor Countries: Evidence from Randomized Evaluations.

*Date:* April 8, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435-6898, [wallsc@mail.nih.gov](mailto:wallsc@mail.nih.gov). (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5422 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Ottenbacher—Program Project.

*Date:* April 8, 2009.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301-435-6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5423 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.

*Date:* March 17-18, 2009.

*Open:* March 17, 2009, 8:30 a.m. to 9:30 a.m.

*Agenda:* Concept review.

*Place:* Ritz Canton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

*Closed:* March 17, 2009, 9:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

*Closed:* March 18, 2009, 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

*Contact Person:* Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Room 220, MSC 8401, Bethesda, MD 20892-8401, 301-451-4530, [el6r@nih.gov](mailto:el6r@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 6, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5425 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, April 2, 2009, 3:30 p.m. to April 2, 2009, 4:30 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 which was published in the **Federal Register** on March 4, 2009, 74 FR 9410.

The meeting will be held on April 6, 2009. The meeting is closed to the public.

Dated: March 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5495 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel. Loan Repayment.

*Date:* May 15, 2009.

*Time:* 12 p.m. to 11:59 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814.

*Contact Person:* Bitu Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814. 301-402-7701. [nakhaib@nia.nih.gov](mailto:nakhaib@nia.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5499 Filed 3-12-09; 8:45 am]

BILLING CODE 4140-01-P

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, T Cell Antigens.

*Date:* April 6-8, 2009.

*Time:* 8 a.m. to 7 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-8399, [davidsonw@mail.nih.gov](mailto:davidsonw@mail.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Trials in Organ Transplantation (CTOT) (U01).

*Date:* April 13-14, 2009.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Legacy, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5524 Filed 3-12-09; 8:45 am]

BILLING CODE 4140-01-P

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* April 17, 2009.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* Key topics for this meeting will focus on emerging issues of public importance in biomedical and behavioral research. Further information will be available on the COPR website at <http://www.copr.nih.gov>.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Kelli L. Carrington, MA, Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, 301-594-4575, [carringk@mail.nih.gov](mailto:carringk@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.copr.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 9, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9-5497 Filed 3-12-09; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Public Consultation on Personnel Reliability Issues

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice of public consultation meeting on personnel reliability of individuals with access to Select Agents.

**SUMMARY:** The National Science Advisory Board for Biosecurity (NSABB), an advisory committee of the Federal Government, is hosting a public consultation to engage the scientific community and general public in a discussion of personnel reliability, with a focus on optimal characteristics of individuals with access to Select Agents. This public consultation is an opportunity for members of the scientific community and general public to provide input on these important issues.

**DATE AND TIME:** The one day public consultation will be held on April 3, 2009 from 8 a.m.—5:15 p.m.

**ADDRESSES:** The public meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ronna Hill, NIH Office of Biotechnology Activities, by e-mail at [hillro@od.nih.gov](mailto:hillro@od.nih.gov) or by telephone at 301-435-2137. Faxes may be sent to the NIH Office of Biotechnology Activities at 301-496-9839.

#### SUPPLEMENTARY INFORMATION:

##### Background

Given heightened concerns about insider threats at organizations that work with highly pathogenic agents, the Federal government has charged the National Science Advisory Board for Biosecurity (NSABB) with recommending a personnel reliability program for individuals with access to Select Agents. A portion of their recommendations will address the measures that institutions should undertake to assess whether individuals are trustworthy and reliable to work with these agents.

The Board appreciates the potential impact that any future requirements for personnel reliability programs would have on institutions and investigators, and thus is hosting a public consultation meeting to engage the scientific community, research organizations, and other stakeholders, including the general public, in a discussion of the personnel reliability

attributes being considered by the NSABB.

The meeting will be structured around several discussion panels. The first panel will be background presentations on extant personnel reliability programs and aspects of the current Select Agent Programs that address personnel reliability. Two subsequent panels will explore personnel reliability characteristics under consideration by the NSABB and approaches for assessing them. The personnel characteristics include scientific and professional integrity, compliance with biosafety and biosecurity standards, emotional stability, sound judgment, and freedom from vulnerability to coercion. Each panel will include ample time for in-depth plenary discussion of the issues surrounding each topic. Specific discussion questions will be posted ahead of time on the NSABB Web site at: <http://www.biosecurityboard.gov>.

The Board is interested in hearing perspectives from such individuals as investigators who work with Select Agents, senior research officials at institutions registered for Select Agent work, security think tank analysts, responsible officials under the Select Agent program, and individuals who promote the responsible conduct of research and have studied issues of research integrity. Others are equally welcomed and encouraged to participate.

The meeting is open to the public and free of charge. Due to limited space, pre-registration is encouraged. To register, please connect to <http://www.biosecurityboard.gov>. Notice of this meeting will also be published in the **Federal Register**. Any groups or individuals who cannot attend the meeting are encouraged to submit in advance of the meeting written comments to: [nsabb@od.nih.gov](mailto:nsabb@od.nih.gov). Please note that this meeting will not be Web cast. More information about the NSABB is available at <http://www.biosecurityboard.gov>.

Dated: March 9, 2009.

**Amy P. Patterson,**

*Director, Office of Biotechnology Activities, National Institutes of Health.*

[FR Doc. E9-5526 Filed 3-12-09; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### Agency Information Collection Activities: Proposed Collection; Comment Request

[Docket ID: FEMA-2009-0001]

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660-0001; FEMA Form 646-0-1 (new number assignment replacing FEMA Form 85-3), National Defense Executive Reserve Personal Qualifications Statement.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the application process by which FEMA uses to fill positions within the National Defense Executive Reserve Program.

**DATES:** Comments must be submitted on or before May 12, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under docket ID FEMA-2009-0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, WASH, DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

(4) *E-mail.* Submit comments to [FEMA-POLICY@dhs.gov](mailto:FEMA-POLICY@dhs.gov). Include docket ID FEMA-2009-0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on

the Privacy and Use Notice link on the Administration Navigation Bar of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Contact Carol L. Johnson NDER Program Manager, FEMA, (202) 646-3328, e-mail [Carol.Johnson1@DHS.GOV](mailto:Carol.Johnson1@DHS.GOV) for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The National Defense Executive Reserve (NDER) program was established by Section 710(e) of the Defense Production Act of 1950, as amended. Under Executive Order 12919, National Defense Industrial Resources Preparedness, June 3, 1994, Part VI, Section 601, the Administrator of the Federal Emergency Management Agency

(FEMA) coordinates the NDER program activities of departments and agencies with NDER units. The Homeland Security Act of 2000 (Pub. L. 107-296) transfers to the Secretary of the Department of Homeland Security (DHS) the authorities and responsibilities of the Administrator of FEMA. Under the provisions of DHS Delegation Number 9000, the Secretary has delegated authority to perform functions relating to the NDER program to the Administrator of FEMA.

#### Collection of Information

*Title:* National Defense Executive Reserve Personal Qualifications Statement.

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660-0001.

*Form Titles and Numbers:* FEMA Form 646-0-1 (new number assignment

replacing FEMA Form 85-3), National Defense Executive Reserve Personal Qualifications Statement.

*Abstract:* FEMA Form 646-0-1, National Defense Executive Reserve Personal Qualifications Statement, is an application form that is used by Federal departments and agencies to fill NDER vacancies. To become a Reservist, individuals with the requisite qualifications must complete the application form. FEMA serves as the NDER coordinator for all Federal departments and agencies, ensuring that applicants are not already serving in a Federal department or agency sponsored unit and determines the Federal department or agency best suited for the applicant.

*Affected Public:* "Individuals or households".

*Estimated Total Annual Burden Hours:* 5 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form no.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individuals or households	National Defense Executive Reserve Personal Qualifications Statement / FEMA Form 646-0-1.	10	1	.5 Hours .....	5 Hours .....	72.77	\$363.86
Total .....	.....	10	.....	.....	5 Hours .....	.....	\$363.86

*Estimated Cost:* The estimated annualized cost to respondents based on wage rate categories is \$363.86.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

**Larry Gray,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E9-5498 Filed 3-12-09; 8:45 am]

**BILLING CODE 9110-23-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

[Docket ID: FEMA-2009-0001]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; revision of a currently approved information

collection; OMB No. 1660-0045; No Forms.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before April 13, 2009.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency

Management Agency, and sent via electronic mail to [oir.submission@omb.eop.gov](mailto:oir.submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598-3005, facsimile number (202) 646-3347, or e-mail address [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** *Collection of Information*

*Title:* Inspection of Insured Structures by Communities.

*Type of information collection:* Revision of a currently approved collection.

*OMB Number:* 1660-0045.

*Form Titles and Numbers:* No Forms.

*Abstract:* The community inspection report is used for the implementation of the inspection procedures to help communities in Monroe County, the City of Marathon and the Village of Islamorada, Florida verify buildings are compliant with their floodplain management ordinance and to help FEMA ensure that policyholders are paying flood insurance premiums that are commensurate with their flood risk.

*Affected Public:* Individuals and Households, State, local and Tribal governments.

*Estimated Number of Respondents:* 833.

*Frequency of Response:* Once.

*Estimated Average Hour Burden per Respondent:* 2.25 hours.

*Estimated Total Annual Burden Hours:* 1,874 hours. The number of Annual Burden Hours has been increased since publication of the 60-day **Federal Register** Notice (see 73 FR 79139, Dec. 24, 2008).

*Estimated Cost:* The estimated annualized cost to respondents based on wage rate categories is \$42,580.00. The estimated annualized costs to respondents based on wage rate categories has been increased since publication of the 60-day **Federal Register** Notice (see 73 FR 79139, Dec. 24, 2008). The estimated annual cost to the Federal Government is \$10,173.

**Larry Gray,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E9-5500 Filed 3-12-09; 8:45 am]

**BILLING CODE 9110-12-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID: FEMA-2009-0001]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; Reinstatement, with change, of a previously approved collection for which approval has expired, OMB No. 1660-0054; FEMA Form 080-2, AFG Application (General Questions and Narrative), FEMA Form 080-3, Activity Specific Questions for AFG Vehicle Applicants, FEMA Form 080-4, Activity Specific Questions for AFG Operations and Safety Applications, FEMA Form 080-5, Activity Specific Questions for Fire Prevention and Safety Applicants, FEMA Form 080-6, Fire Prevention and Safety Research and Development Application (Questions and Narrative), FEMA Form 080-7, Staffing for Adequate Fire and Emergency Response (General Questions for All Applicants), FEMA Form 080-8, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative), and FEMA Form 080-10, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection reinstated with change. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the use of forms to collect data for the Assistance to Firefighters Grant Applications.

**DATES:** Comments must be submitted on or before May 12, 2009.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under docket ID FEMA-2009-0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation & Policy Team, DHS/FEMA, 500 C Street,

SW., Room 835, Washington, DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

(4) *E-mail.* Submit comments to [FEMA-POLICY@dhs.gov](mailto:FEMA-POLICY@dhs.gov). Include docket ID FEMA-2009-0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Contact Tom Harrington, Fire Program Specialist, Assistance to Firefighters Program Office, Grant Programs Directorate, (202) 786-9791 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The authority for Assistance to Firefighters Grant Program (AFG) and Fire Prevention and Safety (FPS) is derived from the Federal Fire Protection and Control Act of 1974 (15 U.S.C. 2229 *et seq.*), as amended. The authority for Staffing for Adequate Fire and Emergency Response (SAFER) is derived from 15 U.S.C. 2201 *et seq.* This collection is necessary in order for DHS to effectively implement a competitive grant program.

**Collection of Information**

*Title:* Assistance to Firefighters Grant Applications.

*Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*OMB Number:* 1660-0054.

*Form Titles and Numbers:* FEMA Form 080-2, AFG Application (General Questions and Narrative), FEMA Form 080-3, Activity Specific Questions for AFG Vehicle Applicants, FEMA Form 080-4, Activity Specific Questions for AFG Operations and Safety Applications, FEMA Form 080-5, Activity Specific Questions for Fire Prevention and Safety Applicants, FEMA Form 080-6, Fire Prevention and Safety Research and Development

Application (Questions and Narrative), FEMA Form 080-7, Staffing for Adequate Fire and Emergency Response (General Questions for All Applicants), FEMA Form 080-8, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative), and FEMA

Form 080-10, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative). *Abstract:* Information sought under this submission will comprise the grant applications for AFG, FPS and SAFER. The information is necessary to assess

the needs of the applicants as well as the benefits to be obtained from the use of funds.

*Affected Public:* "Not-for-profit" and "State, Local and Tribal Government."

*Estimated Total Annual Burden Hours:* 227,225 hours.

ANNUAL HOUR BURDEN  
TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of Respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local, or Tribal Government.	FF 080-2 AFG Application (General Questions and Narrative).	24,700	1	6.6	163,020	31.60	5,151,432
Not-for-profit institutions.	FF 080-2 AFG Application (General Questions and Narrative).	300	1	6.6	1,980	27.50	54,450.00
State, Local, or Tribal Government.	FF 080-3 Activity Specific Questions for AFG Vehicle Applicants.	8,000	1	2.0	16,000	31.60	505,600.00
State, Local, or Tribal Government.	FF 080-4 Activity Specific Questions for AFG Operations and Safety Applications.	13,000	1	2.0	26,000	31.60	821,600.00
	AFG Subtotal .....	46,000	.....	.....	207,000	.....	6,533,082.00
State, Local, or Tribal Government.	FF 080-5 Activity Specific Questions for Fire Prevention and Safety Applicants.	2,150	1	2.0	4,300	31.60	135,880.00
Not-for-profit institutions.	FF 080-5 Activity Specific Questions for Fire Prevention and Safety Applicants.	300	1	2.0	600	27.50	16,500.00
Not-for-profit institutions.	FF 080-6 Fire Prevention and Safety Research and Development Application (Questions and Narrative).	50	1	21.5	1,075	27.50	29,562.50
	FPS Subtotal .....	2,500	.....	.....	5,975	.....	181,942.50
State, Local, or Tribal Government.	FF 080-7 Staffing for Adequate Fire and Emergency Response (General Questions All Applicants).	1,470	1	2.0	2,940	31.60	92,904.00
Not-for-profit institutions.	FF 080-7 Staffing for Adequate Fire and Emergency Response (General Questions All Applicants).	30	1	2	60	27.50	1,650.00
State, Local, or Tribal Government.	FF 080-8 Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative).	1,000	1	7.5	7,500	31.60	237,000.00
State, Local, or Tribal Government.	FF 080-10 Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).	470	1	7.5	3,525	31.60	111,390.00
Not-for-profit institutions.	FF 080-10 Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).	30	1	7.5	225	27.50	6,187.50
	SAFER Subtotal .....	3,000	.....	.....	14,250	.....	449,131.50
	Grand Total .....	51,500	.....	.....	227,225	.....	7,164,156.00

*Estimated Cost:* The estimated annualized cost to respondents based on

wage rate categories is \$7,164,156.00.

The estimated annual cost to the Federal Government is \$3,875,594.40.



## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Larry Gray,**

*Director, Records Management Division,  
Office of Management, Federal Emergency  
Management Agency, Department of  
Homeland Security.*

[FR Doc. E9-5502 Filed 3-12-09; 8:45 am]

BILLING CODE 9111-64-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### Agency Information Collection Activities: Proposed Collection; Comment Request

[Docket ID: FEMA-2009-0001]

**AGENCY:** Federal Emergency  
Management Agency, DHS.

**ACTION:** Notice; 60-day notice and  
request for comments; revision of a  
currently approved collection; OMB No.  
1660-0009; No Form.

**SUMMARY:** The Federal Emergency  
Management Agency, as part of its  
continuing effort to reduce paperwork  
and respondent burden, invites the  
general public and other Federal  
agencies to take this opportunity to  
comment on a proposed extension,  
without change, of a currently approved  
information collection. In accordance  
with the Paperwork Reduction Act of  
1995, this Notice seeks comments

concerning a Governor's request for a  
major disaster or an emergency  
declaration by the President.

**DATES:** Comments must be submitted on  
or before May 12, 2009.

**ADDRESSES:** To avoid duplicate  
submissions to the docket, please use  
only one of the following means to  
submit comments:

(1) *Online.* Submit comments at  
*http:*

*//www.regulations.gov* under docket ID  
FEMA-2009-0001. Follow the  
instructions for submitting comments.

(2) *Mail.* Submit written comments to  
Office of Chief Counsel, Regulation and  
Policy Team, DHS/FEMA, 500 C Street,  
SW., Room 835, WASH, DC 20472-  
3100.

(3) *Facsimile.* Submit comments to  
(703) 483-2999.

(4) *E-mail.* Submit comments to  
*FEMA-POLICY@dhs.gov*. Include docket  
ID FEMA-2009-0001 in the subject line.

All submissions received must  
include the agency name and docket ID.  
Regardless of the method used for  
submitting comments or material, all  
submissions will be posted, without  
change, to the Federal eRulemaking  
Portal at *http://www.regulations.gov*,  
and will include any personal  
information you provide. Therefore,  
submitting this information makes it  
public. You may wish to read the  
Privacy Act notice that is available on  
the Privacy and Use Notice link on the  
Administration Navigation Bar of *http://  
www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:**  
Contact Peggy Miller, Branch Chief,  
Declarations Unit, Federal Emergency  
Management Agency, 500 C Street, SW.,  
Washington, DC 20472, telephone  
number (202) 646-3886 for additional  
information. You may contact the  
Records Management Branch for copies  
of the proposed collection of  
information at facsimile number (202)  
646-3347 or e-mail address: *FEMA-  
Information-Collections@dhs.gov*.

**SUPPLEMENTARY INFORMATION:** The  
Robert T. Stafford Disaster Relief and  
Emergency Assistance Act, 42 U.S.C.  
5121-5207, as amended (the Stafford  
Act), requires that all requests for a  
major disaster or an emergency  
declaration by the President must be  
made by the Governor of the affected  
State. Section 401 of the Act stipulates  
specific information the Governor must

submit with a request for any major  
disaster or emergency declaration.  
Section 501(a) of the Act stipulates  
specific information the Governor must  
submit with a request for any emergency  
declaration. Section 403(c) of the Act  
authorizes emergency assistance,  
without a Presidential declaration,  
through the utilization of Department of  
Defense personnel and resources.  
Information needed to process the  
request from the Governor is set forth in  
44 CFR Part 206.35 and 206.36.

## Collection of Information

**Title:** The Declaration Process:  
Requests for Preliminary Damage  
Assessment, Federal Disaster  
Assistance, Cost Share Adjustment, and  
Appeals.

**Type of Information Collection:**  
Revision of a currently approved  
collection.

**OMB Number:** 1660-0009.

**Form Titles and Numbers:** No Form.

**Abstract:** When a disaster occurs in a  
State, the Governor of the State or the  
Acting Governor in his/her absence,  
may request a major disaster declaration  
or an emergency declaration. The  
Governor should submit the request to  
the President through the appropriate  
Regional Administrator to ensure  
prompt acknowledgement and  
processing. The information obtained by  
joint Federal, State, and local  
preliminary damage assessments will be  
analyzed by FEMA regional senior level  
staff. The regional summary and the  
regional analysis and recommendation  
shall include a discussion of State and  
local resources and capabilities, and  
other assistance available to meet the  
disaster related needs. The  
Administrator of FEMA provides a  
recommendation to the President and  
also provides a copy of the Governor's  
request. In the event the information  
required by law is not contained in the  
request, the Governor's request cannot  
be processed and forwarded to the  
White House. In the event the  
Governor's request for a major disaster  
declaration or an emergency declaration  
is not granted, the Governor may appeal  
the decision.

**Affected Public:** "State, Local or  
Tribal Governments".

**Estimated Total Annual Burden  
Hours:** 25,536.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form No.	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	Governor's Request/No Form.	56	6	76	25,536	\$46.91	\$1,197,893.76
Total .....	.....	56	.....	.....	25,536	.....	1,197,893.76

*Estimated Cost:* The estimated annualized cost to respondents based on wage rate categories is \$1,197,893.76.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Larry Gray,

Director, Records Management Division,  
Office of Management, Federal Emergency  
Management Agency, Department of  
Homeland Security.

[FR Doc. E9-5504 Filed 3-12-09; 8:45 am]

BILLING CODE 9111-23-P

#### DEPARTMENT OF HOMELAND SECURITY

##### Federal Emergency Management Agency

[Docket ID: FEMA-2009-0001]

##### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660-0070; FEMA Form 75-100, National Fire Department Census.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before April 13, 2009.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to [oir.submission@omb.eop.gov](mailto:oir.submission@omb.eop.gov) or faxed to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598-3005, facsimile number (202) 646-3347, or e-mail address [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Collection of Information

*Title:* National Fire Department Census.

*Type of information collection:* Revision of a currently approved information collection.

*OMB Number:* OMB No. 1660-0070.

*Form Titles and Numbers:* FEMA Form 75-100, National Fire Department Census.

*Abstract:* This collection seeks to identify fire departments in the U.S. to compile a database related to demographics, capabilities, and activities. The database will be used to guide programmatic decisions and provide information to the public.

*Affected Public:* "Federal Government," and "State, Local or Tribal Government."

*Estimated Number of Respondents:* 4,000.

*Frequency of Response:* On occasion.  
*Estimated Average Hour Burden per Respondent:* .42 hours.

*Estimated Total Annual Burden Hours:* 1,667 burden hours.

*Estimated Cost:* \$65,550.00.

Larry Gray,

Director, Records Management Division,  
Office of Management, Federal Emergency  
Management Agency, Department of  
Homeland Security.

[FR Doc. E9-5544 Filed 3-12-09; 8:45 am]

BILLING CODE 9110-17-P

#### DEPARTMENT OF HOMELAND SECURITY

[Docket No. FEMA-2008-0010]

##### National Fire Academy Board of Visitors

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Fire Academy Board of Visitors will meet on April 1-2, 2009.

**DATES:** The meeting will take place Wednesday, April 1, 2009, from 8:30 a.m. to 5 p.m., e.s.t.; and Thursday, April 2, 2009, from 8:30 a.m. to 1:00 p.m., e.s.t. Comments must be submitted by April 8, 2009.

**ADDRESSES:** Members of the public who wish to obtain information for the public meeting may contact Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by March 31, 2009. Members of the public may participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the general public who plan to participate in the meeting should contact Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section, on or before March 31, 2009. Written material as well as requests to have

written material distributed to each member of the committee prior to the meeting should reach Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by March 31, 2009. Comments must be identified by docket ID FEMA-2008-0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov).

Include the docket ID in the subject line of the message.

- *Fax:* (866) 466-5370.

- *Mail:* Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

*Instructions:* All submissions received must include the docket ID for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447-1117, fax (301)

447-1173, and e-mail [teressa.kaas@dhs.gov](mailto:teressa.kaas@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Fire Academy Board of Visitors will be holding a meeting for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Accreditation Committee Report, the National Fire Programs update, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in her judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities

or to request special assistance at the meeting, contact Teresa Kaas as soon as possible.

Dated: March 5, 2009.

**Denis G. Onieal,**

*Acting Assistant Administrator, U.S. Fire Administration, Federal Emergency Management Agency.*

[FR Doc. E9-5540 Filed 3-12-09; 8:45 am]

**BILLING CODE 9110-17-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**Notice of Cancellation of Customs Broker License Due to Death of the License Holder**

**AGENCY:** U.S. Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** General Notice.

**SUMMARY:** Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Mack D. Mann .....	03437	Los Angeles.
William R. Percell .....	03613	Detroit.

Dated: March 5, 2009.

**Daniel Baldwin,**

*Assistant Commissioner, Office of International Trade.*

[FR Doc. E9-5417 Filed 3-12-09; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**Notice of Cancellation of Customs Broker Licenses**

**AGENCY:** U.S. Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** General Notice.

**SUMMARY:** Pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Mid-Atlantic Trade Services, Inc. ....	15081	Baltimore.
T.H. Kelly International Inc. ....	13097	San Francisco.

Dated: March 5, 2009.

**Daniel Baldwin,**

*Assistant Commissioner, Office of International Trade.*

[FR Doc. E9-5419 Filed 3-12-09; 8:45 am]

**BILLING CODE 9111-14-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5281-N-20]**

**Master Appraisal Reports (MARS)**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

Lenders, working with developers, submit the Master Appraisal Reports. Information provided permits for the listing of builder's models that cover the types of individual homes proposed for construction. This eliminates the need for appraisal reports from each individual property in a development. General and specific conditions must be addressed before a property can be endorsed, including providing an estimate of value for each property type.

**DATES:** *Comments Due Date:* April 13, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0493) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh

Street, SW., Washington, DC 20410; e-mail Lillian.Deitzer@HUD.gov or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### This Notice Also Lists the Following Information

*Title of Proposal:* Master Appraisal Reports (MARS).

*OMB Approval Number:* 2502-0493.

*Form Numbers:* HUD-91322, HUD-91322.1, HUD 91322.2, & HUD 91322.3.

*Description of the Need for the Information and its Proposed Use:* Lenders, working with developers, submit the Master Appraisal Reports. Information provided permits for the listing of builder's models that cover the types of individual homes proposed for construction. This eliminates the need for appraisal reports from each individual property in a development. General and specific conditions must be addressed before a property can be endorsed, including providing an estimate of value for each property type.

*Frequency of Submission:* On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	3,710	1		0.217		805

*Total Estimated Burden Hours:* 805.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 6, 2009.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act  
Officer, Office of the Chief Information  
Officer.*

[FR Doc. E9-5413 Filed 3-12-09; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5280-N-09]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date:* March 13, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 5, 2009.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

[FR Doc. E9-5124 Filed 3-12-09; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-IA-2009-N0053; 96300-1671-0000-P5]

#### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species and marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

**DATES:** Written data, comments or requests must be received by April 13, 2009.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents

within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

**SUPPLEMENTARY INFORMATION:**

**Endangered Species**

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant: James W. Thomas, Emory University School of Medicine, Atlanta, GA, PRT-202379*

The applicant requests a permit to acquire from Coriell Cell Repositories, Camden, NJ, in interstate commerce DNA samples from a male Sumatran orangutan (*Pongo abelli*), a male northern white-cheeked gibbon (*Nomascus leucogenys*), and a male western gorilla (*Gorilla gorilla*) for the purpose of scientific research. This notification covers the one-time acquisition.

*Applicant: Duke University Lemur Center, Durham, NC, PRT-203347*

The applicant requests a permit to import up to 10 (four males and six females) grey mouse lemurs (*Microcebus murinus*) from the Departement d'Ecologie et Gestion de la Biodiversite, Brunoy, France, for the purpose of enhancement of the survival of the species. This notification covers the one-time import to be conducted by the applicant.

*Applicant: Stanford University, Barsh Laboratory, Stanford, CA, PRT-204613*

The applicant requests a permit to import biological samples from cheetah (*Acinonyx jubatus*) collected by Cheetah Conservation Fund in Namibia for the purpose of scientific research into population genetics. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant: Brigham and Woman's Hospital, Boston, MA, PRT-205571*

The applicant requests a permit to acquire from Coriell Institute, Camden, NJ, in interstate commerce DNA and cell line samples from gorilla (*Gorilla*

*gorilla*) for the purpose of scientific research. This notification covers the one-time acquisition.

*Applicant: Fish and Wildlife Service, Office of Law Enforcement, Arlington, VA, PRT-691650*

The applicant requests renewal of a permit to export/re-export and import/re-import any endangered or threatened species for the explicit purpose of investigation and other law enforcement activities in order to enhance the survival of the species in the wild. This notification covers activities to be conducted by the applicant over a five-year period.

*Applicant: Stephen P. Monti, Mount Kisco, NY, PRT-207161*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant: Winnie G. Raymond, Harshaw, WI, PRT-207087 (GS)*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant: Thomas Productions, Inc., Las Vegas, NV, PRT'S-066158, 066159, 097784, 097785, 097787, 203511*

The applicant requests permits to export/re-export and re-import tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: New—203511, Kaos; Re-issue permits—066158, Sampson; 066159, Starr; 097784, Rocky; 097785, Maxmillian; 097787, Mercury. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

**Marine Mammals**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies

of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

*Applicant: Alaska Museum of Natural History, Anchorage, AK, PRT-200587*

The applicant requests a permit to acquire a northern sea otter skeleton (*Enhydra lutris kenyoni*) obtained as a carcass from Alaskan waters near Homer for the purpose of public display.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: March 6, 2009.

**Lisa J. Lierheimer,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. E9-5444 Filed 3-12-09; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[AA-8104; AK-965-1410-KC-P]**

**Alaska Native Claims Selection**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Ahtna, Incorporated. The lands are in the vicinity of Chitina, Alaska, and are located in:

**Copper River Meridian, Alaska**

T. 3 S., R. 3 E.,

Secs. 1 to 36, inclusive.

Containing approximately 22,944 acres.

Notice of the decision will also be published four times in the Valdez Star.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 13, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30

days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907-271-5960, or by e-mail at [ak.blm.conveyance@ak.blm.gov](mailto:ak.blm.conveyance@ak.blm.gov). Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Charles Lovely,**

*Land Transfer Resolution Specialist, Land Transfer Adjudication II.*

[FR Doc. E9-5487 Filed 3-12-09; 8:45 am]

**BILLING CODE 4310-JA-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[F-14862-A, F-14862-A2; AK-965-1410-KC-P]

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kuitsarak Incorporated. The lands are in the vicinity of Goodnews Bay, Alaska, and are located in:

#### Seward Meridian, Alaska

U. S. Survey No. 9995, Alaska

Containing 18.24 acres.

U. S. Survey No. 13739, Alaska

Containing 6.01 acres.

T. 10 S., R. 71 W.,  
Secs. 7 and 19;  
Secs. 20 to 24, inclusive;  
Secs. 28 to 31, inclusive;  
Secs. 32 and 33.

Containing approximately 7,661 acres.

T. 11 S., R. 71 W.,  
Secs. 21, 22, and 28;  
Secs. 29 to 32, inclusive.

Containing approximately 4,159 acres.

T. 10 S., R. 72 W.,  
Secs. 1 and 11;  
Sec. 25.

Containing approximately 1,824 acres.

T. 11 S., R. 72 W.,  
Secs. 11, 14, and 23;  
Secs. 25 to 29, inclusive;  
Secs. 32 and 36.

Containing approximately 5,888 acres.

T. 12 S., R. 72 W.,  
Secs. 1, 3, and 4;  
Secs. 9 to 12, inclusive;  
Secs. 14 and 15.

Containing approximately 4,844 acres.

T. 12 S., R. 74 W.,  
Sec. 28.

Containing approximately 198 acres.  
Aggregating approximately 24,600 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Kuitsarak Incorporated. Notice of the decision will also be published four times in *Tundra Drums*.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 13, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7504.

**FOR FURTHER INFORMATION, CONTACT:** The Bureau of Land Management by phone at 907-271-5960, or by e-mail at [ak.blm.conveyance@ak.blm.gov](mailto:ak.blm.conveyance@ak.blm.gov). Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Charmain McMillan,**

*Land Law Examiner, Land Transfer Adjudication II.*

[FR Doc. E9-5546 Filed 3-12-09; 8:45 am]

**BILLING CODE 4310-JA-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and

individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from January 26 to January 30, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington, DC 20005; by fax, 202-371-2229; by phone, 202-354-2255; or by e-mail, [Edson\\_Beall@nps.gov](mailto:Edson_Beall@nps.gov).

Dated: March 10, 2009.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name**

*Alabama, Jefferson County*

Ramsay-McCormack Building,  
1823-1825 Avenue E,  
Birmingham, 08001273,  
Listed, 1/30/09.

*Arkansas, Hempstead County*

Southwestern Proving Ground Building  
No. 129,  
195 Hempstead Co. Rd. 279,  
Hope, 08001373,  
Listed, 1/29/09  
(World War II Home Front Efforts in  
Arkansas, MPS).

*Arkansas, Nevada County*

Camden to Washington Road-Rosston  
Segment,  
Nevada Co. Rd. 10,  
Rosston vicinity, 08001374,  
Listed, 1/29/09.

*Arkansas, Yell County*

Dardanelle Commercial Historic  
District,  
Roughly bounded by Front, Oak, 2nd  
and Pine Sts.,  
Dardanelle, 08001039,  
Listed, 1/28/09.

*Colorado, Boulder County*

Arnett-Fullen House,  
646 Pearl St.,  
Boulder, 08001376,  
Listed, 1/29/09.

*District of Columbia, District of  
Columbia State Equivalent*

First African New Church,  
2105-07 10th St., NW.,  
Washington, DC, 08001375,  
Listed, 1/29/09.

*Iowa, Jones County*

Anamosa Main Street Historic District,

200–300 block W. Main St., 100 block E. Main St., 100 block N. and S. Ford St., 100 block N. Garnavillo St., Anamosa, 08001381, Listed, 1/29/09.

*Iowa, Page County*

Iowan's Hotel, 508 E. Railroad St., Essex, 08001382, Listed, 1/29/09.

*Missouri, Adair County*

Smith, Dr. E. Sanborn, House, 111 E. Patterson St., Kirksville, 08001385, Listed, 1/30/09.

*Missouri, Buchanan County*

Buchanan County Infirmary, 3500 N. Village Dr., Saint Joseph, 08001386, Listed, 1/29/09.

*Missouri, Jackson County*

Dierks Building, 1000–1006 Grand Blvd., Kansas City, 08001387, Listed, 1/29/09.

*Montana, Chouteau County*

Eagle Butte School, Eagle Butte School Rd., 23 mi. off MT 80, Fort Benton vicinity, 08001383, Listed, 1/28/09.

*Montana, Fergus County*

Hagadone, Frank, Homestead, Missouri River, Mile No. 97, Fergus County vicinity, 08001384, Listed, 1/29/09.

*Nevada, Clark County*

Walking Box Ranch, 6333 W. NV 164, Searchlight vicinity, 08001392, Listed, 1/30/09.

*North Carolina, Wake County*

Welles, Paul and Ellen, House, 3227 Birnamwood Rd., Raleigh, 08001388, Listed, 1/29/09.

*North Carolina, Watauga County*

Miller, John Smith, House, 561 Chestnut Grove Rd., Boone vicinity, 08001389, Listed, 1/29/09.

*North Carolina, Wilkes County*

Hubbard, Benjamin, House, US 18 on the N., one mile E. of NC 1106, Moravian Falls vicinity, 08001390, Listed, 1/29/09.

*North Carolina, Yancey County*

Bald Creek Historic District, Both sides of Bald Creek School Rd., 76–239 Pleasant Valley Rd., and 6193–6195 U.S. 19E,

Burnsville, 08001391, Listed, 1/29/09.

*Oregon, Multnomah County*

Bunyan, Paul, Statue, SW. corner of N. Denver Ave. and N. Interstate Ave., Portland, 08001393, Listed, 1/28/09.

*South Carolina, Richland County*

Pine Grove Rosenwald School, 937 Piney Woods Rd., Columbia, 08001397, Listed, 1/29/09 (Rosenwald School Building Program in South Carolina, 1917–1932).

*South Carolina, Richland County*

Wesley Methodist Church, 1727 Gervais St., Columbia, 08001398, Listed, 1/29/09 (Segregation in Columbia, South Carolina MPS).

*South Carolina, Richland County*

Woman's Club of Columbia, The, 1703 Blossom St., Columbia, 08001399, Determined Eligible, 1/29/09.

*Texas, Tarrant County*

Fort Worth Botanic Garden, 3220 Botanic Garden Blvd., Fort Worth, 08001400, Listed, 1/29/09.

[FR Doc. E9–5507 Filed 3–12–09; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 28, 2009. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written

or faxed comments should be submitted by March 30, 2009.

**J. Paul Loether,**

Chief, National Register of Historic Places/ National Historic Landmarks Program.

## ARIZONA

### Coconino County

Ice House, The, 201 E. Birch Ave., Flagstaff, 09000174.

## CALIFORNIA

### Los Angeles County

Frank, Richard and Mary Alice, House, (Cultural Resources of the Recent Past, City of Pasadena), 919 La Loma Rd., Pasadena, 09000175.

Gill, Merwyn C., House, (Cultural Resources of the Recent Past, City of Pasadena), 1385 El Mirador Dr., Pasadena, 09000176.

Marguerita Lane Historic District, (Cultural Resources of the Recent Past, City of Pasadena), Along Marguerita La., Pasadena, 09000177.

Mello, Clarence and Mary, House, (Cultural Resources of the Recent Past, City of Pasadena), 541 Fremont Dr., Pasadena, 09000178.

Norton, John, House, (Cultural Resources of the Recent Past, City of Pasadena), 820 Burleigh Dr., Pasadena, 09000179.

Pacific Electric Building, 610 S. Main St., Los Angeles, 09000180.

Pike, Robert and Barbara, House, (Cultural Resources of the Recent Past, City of Pasadena), 512 Glen Ct., Pasadena, 09000181.

Poppy Peak Historic District, (Cultural Resources of the Recent Past, City of Pasadena), Bounded by Ave. 64 on the E., La Loma Rd. on the N. including Poppy Peak Dr., Kaweah Dr., Cresthaven Dr., Pasadena, 09000182.

## FLORIDA

### Sarasota County

Downtown Sarasota Historic District, Bound by 1st St., Orange Ave., State St., Gulf Stream Ave. and N. Pineapple Ave., Sarasota, 09000183.

## GEORGIA

### Chatham County

Fairway Oaks-Greenview Historic District, Bounded approx. by DeRenne Dr., Waters Ave., Truman Pkwy., and Casey Canal, and the Live Oaks Golf Course, Savannah, 09000184.

### Fulton County

Winecoff Hotel, 179 Peachtree St., NW., Atlanta, 09000185.

### Newton County

Brick Store, US 278 at Little River Rd./Social Circle Rd., Covington, 09000186.

### Screven County

Harris-Murrow-Trowell House, 473 Old Louisville Rd., Oliver, 09000187.

### Walker County

Chickamauga Coal and Iron Company Coke Ovens, GA 341, Chickamauga, 09000188.

**KANSAS****Dickinson County**

Eliason Barn, (Agriculture-Related Resources of Kansas), 147 KS 4, Gypsum, 09000189.

**Ellis County**

Mermis, J.A., House, 1401 Ash St., Hays, 09000190.

**Montgomery County**

Brown Barn, (Agriculture-Related Resources of Kansas), 5879 Co. Rd. 4300, Independence, 09000191.

**Ness County**

Thornburg Barn, (Agriculture-Related Resources of Kansas), Co. Rd. A, 1.5 mi. W. of D Rd., Utica, 09000192.

**Pottawatomie County**

Teske Farmstead, (Agriculture-Related Resources of Kansas), 20795 Major Jenkins Rd., Onaga, 09000193.

**Republic County**

Shimanek Barn, (Agriculture-Related Resources of Kansas), 1806 220 Rd., Munden, 09000194.

**Sheridan County**

Shafer Barn, (Agriculture-Related Resources of Kansas), Co. Rd. 50S, 1.5 mi. W. of Co. Rd. 80E, Hoxie, 09000195.

**MASSACHUSETTS****Worcester County**

Parkman Parsonage Historic District, Portions of E. Main St., High St., Lincoln St., Milk St., Prospect and Spring Sts., Westborough, 09000196.

**WISCONSIN****Columbia County**

Goeres Park, 101 Fair St., Lodi, 09000197.  
Lodi School Hillside Improvement Site, Corner St., bounded by Pleasant St. and Columbus St., Lodi, 09000198.

[FR Doc. E9-5501 Filed 3-12-09; 8:45 am]

**BILLING CODE 4310-70-P**

**INTERNATIONAL TRADE COMMISSION**

[Inv. No. 337-TA-670]

**In the Matter of Certain Adjustable Keyboard Support Systems and Components Thereof; Notice of Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 10, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Humanscale Corporation of New York, New York.

The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable keyboard support systems and components thereof that infringe certain claims of U.S. Patent No. 5,292,097. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2781.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

**Scope of Investigation:** Having considered the complaint, the U.S. International Trade Commission, on March 6, 2009, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain adjustable keyboard support systems or components thereof that infringe one or more of claims 7, 10, 26, 27, 34, 37, 38,

and 44 of U.S. Patent No. 5,292,097, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Humanscale Corporation, 11 East 26th Street, 8th Floor, New York, New York 10010.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

COMPX International, Inc., 5430 LBJ Freeway, Suite 1700, Dallas, Texas 75240.

COMPX Waterloo, 501 Manitou Drive, Kitchener, Ontario, Canada N2C 1L2.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

Issued: March 9, 2009.



By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9-5426 Filed 3-12-09; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-457 (Final) and 731-TA-1153 (Final)]

### Tow-Behind Lawn Groomers From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of countervailing duty and antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-457 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731-TA-1153 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of tow-behind lawn groomers, provided for in subheadings 8432.40.00, 8432.80.00, 8432.90.00, 8479.89.98, 8479.90.94, and 9603.50.00 of the Harmonized Tariff Schedule of the United States.<sup>11</sup>

<sup>11</sup> For purposes of these investigations, the Department of Commerce has defined the subject merchandise as:

“\* \* \* Certain non-motorized tow behind lawn groomers (“lawn groomers”), manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of these investigations, even if the lawn groomer is designed to perform additional non-subject functions (e.g., mowing). All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of these investigations. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigations. Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist

of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a “plug aerator”), a series of discs with protruding spikes (a “spike aerator”), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (e.g., dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (i.e., a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (“broadcast spreader”), a rotating agitator that allows the media to be released at a consistent rate (“drop spreader”), or any other configuration. Lawn dethatchers with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigations. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigations. Also included in the scope of the investigations are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigations. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigations. When imported separately, modules that are designed to perform subject lawn grooming functions (i.e., sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (i.e., without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope. Lawn groomers, assembled or unassembled, are covered by these investigations. For purposes of these investigations, “unassembled lawn groomers” consist of either (1) all parts necessary to make a fully assembled lawn groomer, or (2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following “major components”:

- (1) An assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
- (2) a sweeper brush;
- (3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
- (4) a spreader hopper;
- (5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
- (6) dethatcher tines;
- (7) aerator spikes, plugs, or other aerating component; or
- (8) a hitch.

The major components or parts of lawn groomers that are individually covered by these investigations under the term “certain parts thereof” are: (1) Brush housings, where the wrapper and end plates incorporating the brush assembly

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**DATES:** *Effective Date:* January 28, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Merrill (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C.

may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit. The products for which relief is sought specifically exclude the following: (1) Agricultural implements designed to work (e.g., churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; (2) lawn or farm carts and wagons that do not groom lawns; (3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; (4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; (5) “push” lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; (6) dethatchers with a net assembled weight (i.e., without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (i.e., without packing, additional weights, or accessories) of more than 200 pounds; and (7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (e.g., “drum-style” spike aerators). The lawn groomers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in these investigations.”

1671b) are being provided to manufacturers, producers, or exporters in China of tow-behind lawn groomers, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 24, 2008, by Agri-Fab, Inc., Sullivan, IL.

**Participation in the investigations and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 21, 2009, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 16, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or

before June 10, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 12, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 9, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 23, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 23, 2009. On July 8, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 10, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is

permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 9, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission,*

[FR Doc. E9-5427 Filed 3-12-09; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### Temporary Change to Filing Procedures

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The United States International Trade Commission (Commission) hereby notifies all users of its Electronic Document Information System (EDIS) that the system will not be available for use from 6 p.m. on Thursday, March 26, 2009, until 6 a.m. on Monday, March 30, 2009. Alternative filing procedures will apply, as outlined below.

**DATES:** March 26–March 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Telephone inquiries should be directed to EDIS Help (202-205-3347) or Docket Services (202-205-1802). E-mail inquiries should be directed to ([Edishelp@usitc.gov](mailto:Edishelp@usitc.gov)). Written inquiries should be directed to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. At

times other than the period specified herein, EDIS may be viewed at <http://edis.usitc.gov>. General information concerning the Commission may also be obtained by accessing its World Wide Web site (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:** In 1996, the Commission established EDIS to store and provide access to docket records in agency proceedings. In 2003, the Commission implemented a document management system (EDIS-II, <http://edis.usitc.gov>) with the capability to accept documents electronically. The Commission's Rules of Practice and Procedure currently provide for the filing of certain documents in electronic form.

Since 2003, EDIS technologies have become outdated and the hardware is beyond its useful life. The Commission has developed and is ready to implement a new EDIS system in order to improve its technical performance. The newly re-engineered system, known as EDIS3, will become operational on March 30, 2009.

In order to switch from the existing EDIS to EDIS3, the Commission must turn the system off for approximately 84 hours to accommodate data migration, system testing, and related tasks. As a result, EDIS will not be available from 6 p.m. Thursday, March 26, 2009, until 6 a.m. Monday, March 30, 2009.

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. The Commission is temporarily suspending its filing procedures for the period of system unavailability, specifically prohibiting electronic filing and access to electronic viewing of documents during the period when EDIS is not available. All paper filings will be accepted in accordance with applicable rules. However, no EDIS Cover Sheets will be available because they cannot be generated by EDIS. A temporary Docket Cover Sheet is available on the Commission Web site as a fillable .pdf form at the following location: [http://www.usitc.gov/docketservices/temporary\\_edis\\_cover.pdf](http://www.usitc.gov/docketservices/temporary_edis_cover.pdf). In order to comply with the requirements of Commission rule 201.8 (19 CFR 201.8), a person filing a document with the Commission while EDIS is shut down, must submit with the filing a valid Docket Cover Sheet prepared using this temporary form.

By order of the Commission.

Issued: March 10, 2009.

**Marilyn R. Abbott,**  
Secretary.

[FR Doc. E9-5468 Filed 3-12-09; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Water Act

Notice is hereby given that on March 9, 2009, a proposed "First Amendment to 2006 Consent Decree," pertaining to *United States and State of Indiana v. City of Indianapolis*, Civ. No. 1:06-cv-1456, was lodged with the United States District Court for the Southern District of Indiana.

In the original action, the United States sought civil penalties and injunctive relief for alleged violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1319 and 1342, in connection with the City's operation of its municipal wastewater and sewer system. In December 2006, the Court entered a Consent Decree which requires the City, among other things, to implement a Long Term Control Plan ("LTCP") to reduce Combined Sewer Overflows ("CSO"). CSO Control Measure 16, as set forth in the Table 7-5 of Section 7 of the 2006 Consent Decree, requires the City to construct a shallow interceptor sewer having a total capacity of 24 million gallons. However, all of the Parties to the 2006 Consent Decree, have agreed that CSO Control Measure 16 should be modified to require the City to undertake construction of a conveyance and storage tunnel that would be constructed approximately 200 feet below ground. The modified project would provide for the construction of a storage and transport facility of approximately 18 feet in diameter, having a minimum storage volume of 54 million gallons, along a new alignment which would minimize environmental, right-of-way, and other issues that were discovered during the design of the original project. The modified project will provide for capture of additional overflow volumes from CSO 008 approximately three and one-half years earlier than currently outlined in the 2006 Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to

[pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and State of Indiana v. City of Indianapolis*, D.J. Ref. 90-5-1-1-07292. The proposed "First Amendment to 2006 Consent Decree" may be examined at the Office of the United States Attorney for the Southern District of Indiana, 10 West Market St., Suite 2100, Indianapolis, IN 46204 (contact Asst. U.S. Attorney Thomas Kieper (317-226-6333)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Gary Prichard (312-886-0570)). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.50 (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**William Brighton,**

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-5434 Filed 3-12-09; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to The National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on February 17, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust

plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between December 2008 and February 2009 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at <http://www.astm.org>.

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 9, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 3, 2009 (74 FR 5948).

**Patricia A. Brink,**  
*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9-5272 Filed 3-12-09; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on February 12, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inigral, Inc., San Francisco, CA; and LearnGauge, Okemos, MI have been added as parties to this venture. Also, Cisco Systems, San Antonio, TX has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its

original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on November 17, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 12, 2009 (74 FR 1247).

**Patricia A. Brink,**  
*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9-5269 Filed 3-12-09; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Card Foundation

Notice is hereby given that, on February 11, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Information Card Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Scott Loftness (individual member), Palo Alto, CA; Mediportal, Overmere, BELGIUM; NorthID, Helsinki, FINLAND; Tascet Identity Network, Madison, WI; Acxiom, Broomfield, CO; Craig Burton (individual member), Salt Lake City, UT; Kaliya Hamlin (individual member), Berkeley, CA; Alexis Bor (individual member), Haymarket, VA; Jem Pagan (individual member), York, PA; Bob Lutz (individual member), Scotch Plains, NJ; J. Robert Namestka (individual member), Irwin, PA; Patrick Petit (individual member), San Martin d'Uriage, FRANCE; and Brian Roosevelt (individual member), Marshfield, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Information Card Foundation intends to file additional written notifications disclosing all changes in membership.

On June 2, 2008, Information Card Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2008 (73 FR 40883).

The last notification was filed with the Department on October 20, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 21, 2008 (73 FR 70674).

**Patricia A. Brink,**  
*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9-5270 Filed 3-12-09; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture To Perform Project Entitled Versatile Onboard Traffic Embedded Roaming Sensors ("VOTERS")

Notice is hereby given that, on February 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Joint Venture to Perform Project Entitled Versatile Onboard Traffic Embedded Roaming Sensors ("VOTERS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Northeastern University, Boston, MA; University of Massachusetts Lowell, Lowell, MA; University of Vermont and State Agricultural College, Burlington, VT; and Witten Technologies, Inc., Somerville, MA. The general area of VOTERS's planned activity is to develop new products from groundbreaking advanced technologies

that inspect and monitor infrastructure using sensors.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9-5268 Filed 3-12-09; 8:45 am]

**BILLING CODE 4410-11-M**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Geosciences (1755).

*Dates:* April 15, 2009, 8:30 a.m.–5 p.m. and April 16, 2009, 8:30 a.m.–2 p.m.

*Place:* Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

*Type of Meeting:* Open.

*Contact Person:* Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703-292-8500.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

*Agenda:*

April 15, 2009

Directorate activities and plans.

SODV Briefing.

Division Subcommittee Meetings.

Education & Diversity Subcommittee

Meeting.

April 16, 2009

Subcommittee Reports.

Meeting with the Director.

Action Items/Planning for Fall Meeting.

Dated: March 10, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9-5440 Filed 3-12-09; 8:45 am]

**BILLING CODE 6717-01-P**

## NATIONAL SCIENCE FOUNDATION

### Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Astronomy and Astrophysics Advisory Committee (#13883).

*Date and Time:* April 30, 2009. 11 a.m.–4 p.m. EDT.

*Place:* Teleconference; National Science Foundation, Room 273, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. Craig B. Foltz, Acting Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703-292-4908.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

*Agenda:* To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: March 10, 2009.

**Susanne E. Bolton,**

*Committee Management Officer.*

[FR Doc. E9-5438 Filed 3-12-09; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meeting:

*Name:* Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at the University of Oklahoma and University of Arkansas, also Called Center for Semiconductor Physics in Nanostructures (C-SPIN), by NSF Division of Materials Research (DMR) #1203.

*Dates & Times:* April 6, 2009; 7:30 a.m.–9 p.m., April 7, 2009; 8 a.m.–3:30 p.m.

*Place:* University of Arkansas, Fayetteville, Arkansas.

*Type of Meeting:* Part-open.

*Contact Person:* Dr. Z. Charles Ying, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292-8428.

*Purpose of Meeting:* To provide advice and recommendations concerning further support of the MRSEC at the University of Oklahoma and University of Arkansas.

**Agenda**

*Monday, April 6, 2009*

7:30 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–4:30 p.m. Open—Review of the OU/UA. MRSEC

4:30 p.m.–6 p.m. Closed—Executive Session.

6 p.m.–9 p.m. Open—Poster Session and Dinner.

*Tuesday, April 7, 2009*

8 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–10:15 a.m. Open—Review of the OU/UA MRSEC.

10:15 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report.

*Reason for Closing:* The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 10, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9-5439 Filed 3-12-09; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95-541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by April 13, 2009. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:**

Nadene G. Kennedy at the above address or (703) 292-7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and

certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The application received follows:

#### 1. Permit Application No. 2009-025

##### *Applicant*

Cindy Lee Van Dover, Duke University Marine Lab, 135 Marine Lab Road, Beaufort, NC 28516.

##### *Activity for Which Permit Is Requested*

Take, Introduce Non-Indigenous Species into Antarctica, and Import into the USA. The applicant plans to collect sediment cores and seep invertebrates from the Larsen B embayment in order to (1) Characterize trophic relations between sediment bacteria, clams and other macro-invertebrates present in newly-discovered cold seeps; (2) provide a preliminary assessment of the genetic population structure of Larsen B cold seep clams; and (3) characterize the evolutionary relationship between Larsen B cold seep clams and other members of the family *Vesicomyidae*. In addition, the applicant will deploy North Atlantic Right Whale vertebrae bones and pine wood substrate on eight moorings scattered through the Larsen B embayment. If time permits, invertebrates will be collected from the whale bone and wood substrates. During their second season, additional sediment cores will be collected as well as invertebrates, and the bone and wood moorings will be recovered.

##### *Location*

Larsen B Embayment, Antarctica.

##### *Dates*

January 1, 2010 to March 31, 2012.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E9-5291 Filed 3-12-09; 8:45 am]

**BILLING CODE 7555-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting**

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on March 27, 2009, Room T-2-B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 27, 2009—1 p.m. until the conclusion of business.

The Subcommittee will review example uses of the guidance on performance of sensitivity and uncertainty analyses described in NUREG-1855. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Harold VanderMolen (Telephone: 301-415-6236) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 4:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 6, 2009.

**Cayetano Santos,**

*Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.*

[FR Doc. E9-5450 Filed 3-12-09; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-438 and 50-439; NRC-2009-0093]

### **In the Matter of Tennessee Valley Authority (Bellefonte Nuclear Plant Units 1 and 2); Order**

The U.S. Atomic Energy Commission (predecessor to the U.S. Nuclear Regulatory Commission (NRC or the Commission)) issued construction permit (CP) Nos. CPPR-122 and CPPR-123 to the Tennessee Valley Authority (TVA or the applicant) on December 24, 1974, authorizing construction of the Bellefonte Nuclear Plant (Bellefonte or

BLN) Units 1 and 2, respectively, at the applicant's site in Jackson County, AL, on a peninsula at Tennessee River Mile 392 on the west shore of Guntersville Reservoir, about 6 miles east northeast of Scottsboro, AL. On March 4, 2003, the NRC issued an Order amending CP Nos. CPPR-122 and CPPR-123 by revising the latest dates for completion of construction to October 1, 2011, for BLN Unit 1, and October 1, 2014, for BLN Unit 2.

On September 14, 2006, the NRC granted TVA its request to withdraw the CPs. Until the time of withdrawal, these facilities were in a deferred plant status as described in the Commission's Policy Statement on Deferred Plants, as published in the **Federal Register** on October 14, 1987 (52 FR 38077).

In a letter dated August 26, 2008, as supplemented on September 25, 2008, and on November 24, 2008, TVA has requested these CPs be reinstated.

The NRC staff has prepared an "Environmental Assessment and Finding of No Significant Impact," which was published in the **Federal Register** on March 3, 2009 (74 FR 9308). Under Title 10, Section 51.32, "Finding of No Significant Impact," of the *Code of Federal Regulations* (10 CFR 51.32), the Commission has determined that reinstating the CPs and placing the facility in a terminated plant status will not have a significant impact on the environment.

For further details on this action, see the TVA application dated August 26, 2008, as supplemented on September 25, 2008, and on November 24, 2008, and the NRC staff's letter and safety evaluation related to the requested reinstatement of the CPs dated March 9, 2009. Documents may be examined and/or copied for a fee at the NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), and they are accessible through the Agencywide Documents Access and Management System (ADAMS) Electronic Reading Room link at the NRC Web site, <http://www.nrc.gov>.

Any person adversely affected by this Order may request a hearing on this Order within 60 days of its issuance, and the request for a hearing is limited to whether good cause exists for the reinstatement of the CPs. The NRC will consider extending the time to answer or to request a hearing where good cause is shown. A request for an extension of time must be directed to the Director of the Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission, and must include a statement of good cause for the extension. Requirements for hearing requests are found in 10 CFR 2.309,

“Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions.”

All documents filed in NRC adjudicatory proceedings, including a request for hearing, any motion or other document filed in the proceeding prior to the submission of a request for hearing, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC’s Electronic Maintenance and Submission of Information (E-Filing) rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or, in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 10 days prior to the filing deadline, the requestor should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov) or by calling (301) 415-1677, to request (1) a digital identification (ID) certificate that allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating or (2) the creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE) viewer, which is a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about how to apply for a digital ID certificate is also available on NRC’s public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits the document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m.

Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency’s adjudicatory e-filing system may seek assistance through the “Contact Us” link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Electronic Filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672-7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC Electronic Filing Help Desk at [MSHD.resource@nrc.gov](mailto:MSHD.resource@nrc.gov). Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted (1) by first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or (2) by courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of the deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board

that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC’s electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless they are excluded under an order of the Commission, the Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or home telephone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a “fair use” application, participants are requested not to include copyrighted materials in their submission.

If a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

The scope of this Order reinstating the CPs and any proceeding hereunder is limited to direct challenges to the permit holder’s asserted reasons that show good cause justification for the reinstatement of the CPs.

*Attorney for the Permit Holder:*  
Maureen H. Dunn, Executive Vice President and General Counsel,  
Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

Accordingly, pursuant to Section 161b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2201(b), and 10 CFR 50.55(b), *it is hereby ordered that* CP Nos. CPPR-122 and CPPR-123 for the construction of BLN Units 1 and 2, respectively, are reinstated, and the facility returned to a terminated plant status under Section III.B, “Terminated Plant,” of the Commission’s Policy Statement on Deferred Plants dated October 14, 1987 (52 FR 38077). It is also ordered, in accordance with 10 CFR 50.55(b), that the expiration dates defining the latest construction completion dates for CP Nos. CPPR-122 and CPPR-123 are October 1, 2011, and October 1, 2014, respectively. Should TVA choose to pursue placement of the facility in a deferred plant status, it shall ensure to the satisfaction of the NRR Director that it has complied with the guidance and



provisions under Section III.A, "Deferred Plant," of the Commission's Policy Statement on Deferred Plants. When the results of its evaluation and inspection are satisfactory, the NRR Director may then authorize placement of the facility in a deferred plant status. Should TVA decide to reactivate construction, it shall comply with the provisions for notifying the NRR Director and shall provide the information described in the Commission's Policy Statement on Deferred Plants.

Dated at Rockville, Maryland, this 9th day of March 2009.

For the Nuclear Regulatory Commission.

**Eric J. Leeds,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. E9-5437 Filed 3-12-09; 8:45 am]

**BILLING CODE 7590-01-P**

## RAILROAD RETIREMENT BOARD

### Proposed Data Collection(s) Available for Public Comment and Recommendations

**Summary:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

**Comments are invited on:** (a) Whether the proposed information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden for the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Survivor Questionnaire; OMB 3220-0032.

Under Section 6 of the Railroad Retirement Act (RRA), benefits that may be due on the death of a railroad employee or a survivor annuitant include (1) a lump-sum death benefit (2) a residual lump-sum payment (3) accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR part 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL-94-F, Survivor Questionnaire, to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

The RRB proposes minor non-burden impacting changes to Form RL-94-F. The completion time for the RL-94-F is estimated at between 5 to 11 minutes. The RRB estimates that approximately 8,000 responses are received annually.

2. *Title and Purpose of Information Collection:* Pension Plan Reports; OMB 3220-0089.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25-29 years of railroad service. In addition to 25 years of service, a "current connection" with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates

(generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employees receive monthly pension payments, or lump-sum pension payments, from their former railroad employer, which are based in whole or in part on contributions from that railroad employer. The employees' own contributions to their pension accounts do not cause a reduction. An employer private pension is described in 20 CFR 216.40-216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such employer pension plans cause reductions to the RRB supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the employer made contributions to the pension; (d) whether or not the employee was cashed out before attaining retirement age under the employer pension plan or received the pension in a lump-sum payment in lieu of monthly pension payments; and (e) whether the employer pension plan continues when the employer status under the RRA changes. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form(s) G-88p (Employer's Supplemental Pension Report), G-88r (Request for Information About New or Revised Pension Plan), and G-88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

The RRB proposes no changes to Form G-88p, G-88r or G-88r.1

The estimated annual respondent burden is as follows:

### ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
G-88p .....	750	8	100
G-88r .....	10	10	2
G-88r.1 .....	5	7	1
Total .....	765	.....	103



*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363 or send an e-mail request to [Charles.Mierzwa@RRB.GOV](mailto:Charles.Mierzwa@RRB.GOV). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or send an e-mail to [Ronald.Hodapp@RRB.GOV](mailto:Ronald.Hodapp@RRB.GOV). Written comments should be received within 60 days of this notice.

Charles Mierzwa,  
Clearance Officer.

[FR Doc. E9-5490 Filed 3-12-09; 8:45 am]

BILLING CODE 7905-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59524; File No. SR-CBOE-2009-012]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of the Dividend, Merger and Short Stock Interest Strategies Fee Cap Pilot Program Until March 1, 2010

March 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2009, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to extend until March 1, 2010, the

dividend, merger and short stock interest strategies fee cap program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

###### (a) Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). The Strategy Fee Cap is in effect as a pilot program that is due to expire on March 1, 2009.

The Exchange proposes to extend the Strategy Fee Cap pilot program until March 1, 2010. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap pilot program would enable the Exchange to remain competitive for these types of strategies by keeping fees low.

###### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the proposed extension of the Strategy Fee Cap pilot program would continue to benefit market participants who trade these strategies by lowering their fees.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-012 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File Number SR-CBOE-2009-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

*rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2009-012 and should be submitted on or before April 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-5387 Filed 3-12-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59534; File No. SR-FINRA-2008-024]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Discovery Guide To Update the Document Production Lists

March 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 11, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended by Amendment No. 1 on January 21,

2009,<sup>3</sup> the proposed rule change as described in Items I, II, and III below, which Items substantially have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend the Discovery Guide to update the Document Production Lists. The text of the proposed rule change is available at FINRA, at its Web site (<http://www.finra.org>), and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The proposed rule change adds clarifying and conforming language to the introduction in the Discovery Guide and updates the Document Production Lists. The text of the proposed rule change is contained in Exhibit 5 and is available on the FINRA Web site at [www.finra.org](http://www.finra.org).

###### Background

In January 1996, the Arbitration Policy Task Force chaired by former SEC chairman David Ruder issued a document entitled, "Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors of NASD" (the "Report"). The Report made a number of broad recommendations to the Board of Governors to improve the securities arbitration process. One of the recommendations states that: "Automatic production of essential documents should be required for all parties, and arbitrators should play a much greater role in directing discovery

and resolving discovery disputes." After the work of the Task Force was completed, several groups were formed to work on discovery issues in response to this recommendation. Each group was composed of persons offering diverse perspectives, including counsel for investors and industry parties, and all made a substantial contribution to the process. The outcome of this process was the Discovery Guide, which the SEC approved after a public comment period,<sup>4</sup> and was made available for use in arbitration proceedings involving customer disputes upon the publication of NASD Notice to Members ("NTM") 99-90 (November 1999).

In March 2004, after more than four years of use, FINRA<sup>5</sup> determined to review the Discovery Guide and consider whether it should be updated. This review was undertaken by FINRA's National Arbitration and Mediation Committee ("NAMC"), a majority public committee of the FINRA Board made up of attorneys who represent investors, attorneys who represent brokerage firms, arbitrators, and mediators. In addition, FINRA staff met with frequent users of the arbitration forum representing both the public and the industry to listen to concerns regarding the Discovery Guide's document production lists, proposals for changes, and reactions to other constituents' proposals. Many of the provisions of the Discovery Guide were incorporated into a major revision of the portion of the Code of Arbitration Procedure for Customer Disputes ("Customer Code"), which was submitted to the SEC in 2003 and approved by the SEC in 2007.<sup>6</sup> The remaining provisions in the Discovery Guide consist primarily of lists of documents that are presumptively discoverable ("Document Production Lists").<sup>7</sup>

###### Summary of Significant Changes

The proposed rule change adds clarifying and conforming language to the introduction in the Discovery Guide and updates the Document Production Lists.

In the introductory language, FINRA proposes to add, "Where additional

<sup>4</sup> See Exchange Act Release No. 41833 (Sept. 2, 1999), 64 FR 49256 (Sept. 10, 1999).

<sup>5</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007).

<sup>6</sup> Exchange Act Release No. 55158 (Jan. 24, 2007), 72 FR 4574 (Jan. 31, 2007) (File No. SR-NASD-2003-158).

<sup>7</sup> See Rule 12506.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 to SR-FINRA-2008-024 replaced and superseded the original rule filing.

information is relevant in a particular case, it can be sought in accordance with the time frames provided in the 12500 series of rules.” This is intended to clarify that the Document Production Lists are not exhaustive, and that other documents may be requested. FINRA is also proposing to replace the reference to “churning” with the term “excessive trading” to conform the introduction to the language used in the Document Production Lists. FINRA also proposes to add a reference in the introduction to new List 12 relating to documents involving particular products or securities. Although FINRA is not proposing any changes to the paragraph on confidentiality, FINRA intends to call attention to an article in FINRA’s newsletter for arbitrators and mediators, the *Neutral Corner*, that provides additional background on the subject.<sup>8</sup>

Non-substantive, stylistic changes are proposed in some Document Production Lists; for example, the term “Associated Person” would be changed to lower case to conform to usage in the Customer Code.

Document Production Lists 1 and 2 apply to all types of disputes. The remainder of the Document Production Lists are categorized by the type of dispute, and within each type, they list first what the industry party must produce, and then what the customer must produce. The discussion below addresses each list by its current number. It should be noted, however, that some lists would be renumbered and/or renamed as part of the proposed rule change.

#### List 1—Documents To Be Produced in All Customer Cases by Firm/Associated Person(s)

List 1 includes documents to be produced in all customer cases by firm/associated person(s).

FINRA proposes to delete the footnote in the heading for List 1. This information is covered in the Customer Code’s subpoena and discovery rules (Rules 12505 through 12514).

List 1, Item 1 requires firms and associated persons to produce all agreements with the customer, including account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms. FINRA proposes to amend Item 1 to

require production of the account record information for the customer. The account record contains important information about the customer, such as the customer’s annual income, net worth, and account objectives, and it indicates whether the record has been signed by the associated person responsible for the account and approved or accepted by a principal of the firm.

FINRA proposes to delete List 1, Items 2 and 3 in their entirety. In many instances, the customer has retained account statements and/or confirmations, and requiring production of these documents in every case adds unnecessary delay and cost to the discovery process. If necessary, the customer may request these documents separately under proposed List 1, Item 2.

FINRA proposes to move current List 1, Item 5 into proposed new List 1, Item 2. Item 5 requires production of all correspondence between the customer and firm/associated person(s) relating to the transaction(s) at issue. Proposed Item 2 clarifies that the required documents are those that were sent to the customer or received by the firm and relate to the accounts or transactions at issue. A new sentence explains that monthly statements and confirmation slips need not be produced unless separately requested.

FINRA proposes to adopt new List 1, Item 3 to require the production of documents pertaining to the customer’s employment status, financial status, annual income, net worth, investment objectives, and risk tolerance. These documents would show what the firm/associated person(s) recorded about the customer’s financial status and investment objectives/risk tolerance.

List 1, Item 4 requires the production of all “holding (posting) pages” for the customer’s account(s) at issue or, if not available, any electronic equivalent. Holding pages are handwritten records of transactions made and kept by associated persons. FINRA proposes to delete Item 4 in its entirety, because holding pages generally are no longer in use, and transaction information in an electronic form would be available to the customer on account statements and/or confirmations.

FINRA proposes to adopt new Item 4 to require the production of documents evidencing any investment or trading strategies utilized or recommended in a customer’s account, including options programs, and any supervisory review of such strategies. New Item 4 would ensure that a customer has access to evidence of trading strategies utilized or recommended by the firm/associated

person(s) that may not have been publicly disseminated by the firm/associated person(s). The proposal would also provide the customer with documentation of any management supervision over the account.

As noted above, FINRA has proposed to move List 1, Item 5 into Item 2.

List 1, Item 6 requires the production of all notes by the firm/associated person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer’s account. FINRA proposes to modify the Item to clarify that notes of telephone calls or conversations must be produced and that required production is not limited to the items specified in the Item. The proposed amendment also provides that required production relates to the customer, in addition to those relating to his or her account(s) or transactions at issue. Because Item 6 requires production of all notes by the firm/associated person(s), the phrase “or on his/her behalf” would be deleted as unnecessary. This Item would be renumbered as Item 5.

Current List 1, Item 7 requires the production of all recordings and notes of telephone calls or conversations about the customer’s account(s) at issue that occurred between the associated person(s) and the customer, and/or between the firm and the associated person(s). FINRA proposes to delete Item 7 in its entirety. Notes of telephone calls or conversations would continue to be discoverable under proposed new Item 5, discussed above. FINRA proposes to eliminate mandatory production of recordings in every case because producing recordings is labor intensive, expensive, and unnecessary in cases where there is no dispute relating to conversations between the parties. Recordings would continue to be subject to discovery on a case by case basis, as the arbitrators deem to be appropriate under Rule 12507 of the Customer Code (Other Discovery Requests).

Current List 1, Item 8 requires production of all Forms RE-3, U4 and U5 including all amendments, all customer complaints identified in such forms, and all customer complaints of a similar nature against the associated person(s) handling the account(s) at issue. FINRA proposes to amend this item to clarify that Disclosure Reporting Pages must be produced. These pages, which are part of Forms U4 and U5, provide customer claimants with valuable, detailed information about prior customer complaints. With regard to customer complaints alleging conduct of a similar nature to that alleged in the Statement of Claim, the amendments

<sup>8</sup> The article would be discussed in the Regulatory Notice announcing approval of the amendments to the Discovery Guide. The article, *Arbitrators and Orders of Confidentiality*, The Neutral Corner, April 2004, is available at: <http://www.finra.org/ArbitrationMediation/Neutrals/Education/NeutralCorner/P010040>.

would allow the firm/associated person(s) to redact portions of these documents to prevent disclosure of nonpublic personal information about other customers. Item 8 would be renumbered as Item 6.

Current List 1, Item 9 requires production of all sections of the firm's Compliance Manual(s) related to the claims alleged in the Statement of Claim, including any separate or supplemental manuals governing the duties and responsibilities of the associated person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the table of contents and index to each Manual. FINRA proposes to amend this Item to replace "Compliance Manual(s)" with "manuals and any updates thereto" and "compliance department" with "firm." The proposal would clarify that manuals must be produced regardless of whether the firm characterizes them as "Compliance Manuals," and bulletins must be produced from any department issuing them. FINRA is also proposing to require the production of updates to the firm's manuals for the time period related to the claims at issue. Updates are material to establishing the firm's procedures in place during a specified time frame. Item 9 would be renumbered as Item 7.

Current List 1, Item 10 requires the production of all analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue. FINRA proposes to amend this Item to clarify that production is limited to analyses and reconciliations prepared during the time period at issue, and includes analyses and reconciliations prepared as part of a review of the customer's account(s) or transaction(s) at issue. These documents are valuable because they contain firm findings concerning reviews of customer accounts. Item 10 would be renumbered as Item 8.

Current List 1, Item 11 requires the production of all records of the firm/associated person(s) relating to the customer's account(s) at issue, such as internal reviews and exception and activity reports, which reference the customer's account(s) at issue. FINRA proposes to amend Item 11 to provide guidance concerning the types of documents that may have been created by a firm in the course of its usual surveillance and compliance activities. The proposed Item would require the production of all exception reports, supervisory activity reviews, activity concentration reports, active account runs and similar documents produced

to review for activity in customer accounts in which customer's account or the transaction(s) at issue are referenced or listed. Item 11 would be renumbered as Item 9.

Current List 1, Item 12 requires the production of records of disciplinary action taken against the associated person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue. Item 12 would be renumbered as Item 10.

FINRA proposes to adopt new List 1, Item 11 to require production of all documents related to the case at issue that are received by the Respondent by subpoena or document request directed to third parties. The subpoena rule, Rule 12512(e) of the Customer Code, requires production of subpoenaed documents. FINRA proposes to cross-reference that rule in the Discovery Guide. Documents received by request would be added to List 1 to ensure that all parties have access to evidence obtained from non-parties.

#### List 2—Documents and Information To Be Produced in All Customer Cases by Customer

List 2 includes documents and information to be produced by the customer in all customer cases.

Current List 2, Item 1 requires the production of all customer and customer-owned business (including partnership or corporate) federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed. FINRA proposes to require the production of complete copies of tax returns for the five years prior to the first transaction at issue in the arbitration, through the year in which the statement of claim is filed. The expanded production would provide parties with a broader understanding of a customer's financial status during the relevant period. The amendments would provide that the income tax returns being provided must be identical to those that were filed with the Internal Revenue Service.

Current List 2, Item 2 requires the production of financial statements or similar statements of the customer's assets, liabilities, and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed. To provide parties with a broader understanding of a customer's financial status during the relevant period,

FINRA proposes to amend this Item to expand the covered period to five years.

Current List 2, Item 3 requires the production of copies of all documents the customer received from the firm/associated person(s) and from any entities in which the customer invested through the firm/associated person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence. FINRA proposes to amend Item 3 to eliminate mandatory production of account statements and confirmations if the customer stipulates to having received them. The amendments would require the customer to produce any statements or confirmations with handwritten notations on them or which are in any way non-identical to those sent by the firm. The amendments would decrease a customer's discovery costs while preserving the requirement to produce documents that may have probative value. FINRA also proposes to add research reports to Item 3. Research reports may provide evidence concerning the basis for a customer's investment decisions.

Current List 2, Item 4 requires the production of account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the Statement of Claim through the date the Statement of Claim was filed. FINRA proposes to amend Item 4 to require the customer to identify each securities firm where the customer has maintained an account and to produce account statements for the five year period prior to the first transaction at issue in the arbitration, through the completion of discovery. The proposal would permit the customer to provide written authorization allowing the respondent firm/associated person to obtain account statements directly from the securities firms in lieu of providing copies of the statements. The proposal would ensure that other parties to the matter have a more complete understanding of the customer's investing history. FINRA proposes to eliminate confirmations from Item 4 because most of the information detailed in confirmations is also contained in account statements.

Current List 2, Item 5 requires the production of all agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/associated person(s). FINRA proposes to expand the scope of this Item by requiring production of documents relating to accounts or transactions at the firm regardless of whether the

documents were signed by the customer.

Current List 2, Item 6 requires the production of all account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue. FINRA proposes to clarify this Item by changing “the account(s) at issue” to “the accounts at the respondent firm or transactions with the respondent firm during the time period at issue.”

Current List 2, Item 7 requires the production of all notes, including entries in diaries or calendars, relating to the account(s) at issue. FINRA proposes to amend Item 7 to provide clarity by changing “the account(s) at issue” to “the accounts at the respondent firm or transactions at issue with the respondent firm.”

Current List 2, Item 8 requires the production of all recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the associated person(s) and the customer (and any person purporting to act on behalf of the customer). FINRA proposes to clarify Item 8 by specifying that the required recordings and notes relate to the customer's accounts or transactions.

Current List 2, Item 9 requires the production of all correspondence between the customer (and any person acting on behalf of the customer) and the firm/associated person(s) relating to the account(s) at issue. FINRA proposes to amend this Item to broaden the scope of the production by deleting the reference to firm/associated person(s). The customer may have corresponded with persons/entities unrelated to the firm concerning the transactions at issue. The amendment would also clarify that the required correspondence relates to the accounts or transactions.

Current List 2, Item 10 requires the production of previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other associated person(s), and any other third party. FINRA proposes to amend this Item to clarify that the required written statements relate to the accounts or transactions at issue.

Current List 2, Item 11 requires the production of all prior complaints by or on behalf of the customer involving securities matters and the firm's/ associated person's response(s). FINRA proposes to delete this item as unnecessary because the respondent firm/associated person would be in possession of any responsive documents

and production by the customer would be duplicative.

Current List 2, Item 12 requires the production of Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and Awards entered in these matters. FINRA proposes to amend Item 12 to: (1) Add “Identify and” before “produce;” (2) include any non-confidential settlements entered in these matters; and (3) extend the time period through the completion of discovery. The proposed change would add that, although an agreement is not presumptively discoverable, a party to a confidential settlement agreement, that by its terms does not preclude identification of the existence of the settlement agreement, must identify the underlying documents of the confidential settlement agreement. The proposed change also would state that such a settlement agreement could be obtained with an order from the panel. By adding the requirement to identify the stated documents, the proposal would ensure that parties are aware of other securities actions even if a customer is not in possession of documents relating to the actions. The amendments would require the customer to produce non-confidential settlements, because the subject matter may be relevant to the pending case. Item 12 would be renumbered as Item 11.

Current List 2, Item 13 requires the production of all documents showing action taken by the customer to limit losses in the transaction(s) at issue. FINRA proposes to delete this item from the Discovery Guide because the firm/ associated person is in possession of any documents that would be responsive to this item and production by the customer would be duplicative.

FINRA proposes to adopt new Item 12 to require the customer to identify loans that he or she applied for or guaranteed for the five years prior to the first transaction at issue in the arbitration through the date the Statement of Claim was filed. The customer also would be required to produce copies of related loan applications, or provide a written authorization allowing the respondent firm/associated person to obtain loan applications directly from each lender. This information may provide evidence relating to the customer's financial status, including, for example, information on net worth, assets, and liabilities.

FINRA proposes to move the content of Lists 8 (Misrepresentations/

Omissions), 10 (Negligence/Breach of Fiduciary Duty) and 14 (Unsuitability) to List 2 because the Items contained in these lists would provide valuable information to parties in all customer cases. Proposed List 2, Items 13 through 16, would require the production of:

- Documents showing the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

- Written documents relied upon by the customer in making the investment decision(s) at issue.

- Copy of the customer's resume.
- Documents showing the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 15.

In addition, FINRA proposes to add to Item 13 the requirement that a claimant Trustee would be required to identify accounts over which he or she has trading authority. A Trustee's trading activity for other accounts may provide relevant evidence of his or her sophistication as an investor.

FINRA proposes to adopt new List 2, Item 17 to require the production of all documents related to the case at issue that are received by the customer by subpoena or document request directed to third parties at any time during the case. Rule 12512(e) of the Customer Code requires production of subpoenaed documents. FINRA proposes to cross-reference the rule in the Discovery Guide. Documents received by request would be added to ensure that all parties have access to evidence obtained from non-parties.

#### List 3—Churning (Firm/Associated Person)

Current List 3 applies to documents required to be produced by firms/ associated persons in cases involving claims based on churning. As part of its plain English initiative, FINRA proposes to change the title of List 3 from Churning, which is defined as excessive activity in a customer's account, to Claims of Excessive Trading.

Current List 3, Item 1 requires the production of all commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the account(s). Current List 3, Item 2 requires the production of all documents reflecting compensation of any kind, including commissions, from all sources generated by the associated person(s) assigned to the customer's account(s) for the two months

preceding, through the two months following, the transaction(s) at issue, or up to 12 months, whichever is longer. The firm is permitted to redact all information identifying customers who are not parties to the action except for the last four digits of the non-party customer account number for each transaction. Proposed new Item 1 combines Items 1 and 2. New Item 1 would expand the scope of discovery concerning the associated person's(s') compensation and provides specificity about the documents that must be produced. New Item 1 would require production of the record of all compensation (monetary and non-monetary), including a listing of the securities traded, dates traded, solicited or unsolicited nature, and the gross and net commission from each trade, for all years in which the conduct alleged in the Statement of Claim occurred. The firm would be permitted to redact nonpublic personal information concerning customers who are not parties to the claim, but could not redact or delete any other information. The expanded time frame would ensure that the associated person's compensation is produced for the entire period that he or she serviced the account. If the firm asserts that the client controlled the trading in the account, the firm would have to produce sufficient information to distinguish the associated person's(s') accounts, and would be required to identify whether the associated person had related accounts that traded at the firm during the period in question. Activity in the associated person's(s') account is relevant because it may provide a basis for transactions that took place in a customer's account.

FINRA proposes to adopt new List 3, Item 2 to require production of a memorandum of each order or instruction given for all transactions at issue in the Statement of Claim. Order memoranda may contain valuable notations made at the time an order was received. Proposed Item 2 would also require documentation showing the associated person's(s') compensation for each transaction. If a wrap fee or similar arrangement applied to the account, the firm would be required to produce a record showing compensation earned by period. Documentation of compensation on an order by order basis provides parties with a clear understanding of how much the associated person was paid for the trading at issue.

Current List 3, Item 3 requires production of documents describing the basis upon which the associated person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred,

including any bonus or incentive program, and compensation and commission schedules. The proposed amendments would clarify the Item by requiring production of a record of all agreements pertaining to the relationship between the associated person and the firm, summarizing the associated person's compensation arrangement or plan with the firm, including commission and concession schedules, bonus or incentive plans, and schedules showing compensation. If compensation was based on factors other than remuneration per trade, the amendments would require a record of the method by which compensation was determined.

#### List 4—Churning (Customer)

FINRA proposes to delete current List 4 (Churning—Customer) which does not identify any documents or information that the customer must produce.

#### List 5—Failure To Supervise (Firm/Associated Person(s))

Current List 5, requires firms/associated persons to produce documents in cases involving claims of failure to supervise.

Current List 5, Item 1 requires the production of all commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue. The proposed amendments would clarify the Item by requiring production of commission runs and other reports showing compensation of any kind relating to the customer's account(s) or transactions at issue. The Item would be renumbered as List 4, Item 1.

Current List 5, Item 2 requires the production of all exception reports and supervisory activity reviews relating to the associated person(s) and/or the customer's account(s) generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the associated person(s) and the customer's account(s). FINRA proposes to amend Item 2 to clarify that activity concentration reports and active account runs must be produced. List 5, Item 2 would be renumbered as List 4, Item 2.

Current List 5, Item 3 requires production of the portions of internal audit reports at the branch in which the customer maintained his/her account(s) that focused on the associated person(s) or the transaction(s) at issue, and were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the

improper conduct alleged in the Statement of Claim. FINRA is not proposing any substantive changes to this Item. The proposed amendments would simplify the language and sentence structure in accordance with FINRA's plain English initiative. List 5, Item 3 would be renumbered as List 4, Item 3.

Current List 5, Item 4 requires production of the portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the associated person(s) or the customer's account(s) or transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the Statement of Claim. The Item would be moved to proposed new Item 6 and the word "improper" would be deleted, as redundant, from the phrase "improper conduct alleged in the Statement of Claim."

FINRA proposes to adopt new List 4, Item 4 to require the production of any writings reflecting conversations between the associated person assigned to the customer's account during the time period at issue and members of the firm's compliance department. FINRA believes that such writings may provide evidence concerning firm supervisory activities relating to the associated person.

FINRA proposes to adopt new List 4, Item 5 to require the production of copies of any inquiries, charges or findings by any regulator (state, federal or self-regulatory organization) and the responses thereto by the firm/associated person for alleged improper behavior by the associated person similar to that alleged in the Statement of Claim. This Item is intended to complement proposed Item 6 by expanding the scope of documents produced that relate to supervision of the associated person.

Proposed new List 4, Item 6 is discussed under current List 5, Item 4, above.

FINRA proposes to adopt new List 4, Item 7 to require the production of any notes or memoranda evidencing supervisory or managerial review of the customer's account or trades for the period at issue. These documents would provide important evidence in a case alleging failure to supervise.

FINRA proposes to adopt new List 4, Item 8 to require the production of all correspondence between the customer and firm/associated person relating to the customer's account(s) or transaction(s) at issue bearing

indications of managerial or supervisory review of such correspondence. This Item is intended to complement proposed List 1, Items 2 (correspondence between the customer and firm/associated person relating to the transactions) and 5 (notes by the firm/associated person relating to the customer's account) by requiring production of documents indicating supervisory review of customer correspondence with the firm.

**List 6—Failure To Supervise (Customer)**

FINRA proposes to delete List 6 (Failure To Supervise—Customer) which does not identify any documents or information that the customer must produce.

**List 7—Misrepresentations/Omissions (Firm/Associated Person(s))**

Current List 7 requires firms/associated person(s) to produce documents in cases involving claims of misrepresentations or omissions. List 7 requires the production of all materials prepared or used by the firm/associated person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes indicating the associated person(s) reviewed or read such documents. As an alternative, the firm/associated person(s) is permitted to produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon request by a party, the firm/associated person(s) is required to provide any documents identified on the list. FINRA proposes to clarify this List by specifying that in addition to materials prepared or used by the firm/associated person(s), materials provided to the customer must be produced. The amendments would also require production of sales literature and performance or risk data. In addition, FINRA proposes to delete the alternative procedure provided in this Item. Because this two-step production causes delays in the discovery process. Disputes about the details contained on the lists often arise, resulting in parties requesting production of every item on the list. Current List 7 would be renumbered as proposed List 5.

**List 8—Misrepresentations/Omissions (Customer)**

Current List 8 requires customers to produce documents in cases involving allegations of misrepresentations or omissions. FINRA proposes to move Items 1 through 3 of current List 8 to

proposed List 2. This would expand required production of these documents to all customer cases.

FINRA proposes adopt new List 6 to require the customer to produce copies of all materials received or obtained from any source relating to the transactions or products at issue, and other prospective investments, including research reports, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes. Production of these documents may provide evidence concerning representations made to the customer by the firm/associated person. Current List 8 would be renumbered as List 6.

**List 9—Negligence/Breach of Fiduciary Duty (Firm/Associated Person)**

Current List 9 requires production of copies of all materials prepared or used by the firm/associated person relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes indicating that the associated person reviewed or read such documents. As an alternative, the firm/associated person is permitted to produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/associated person is required to provide any documents identified on the list. In addition, FINRA proposes to clarify this List by specifying that in addition to materials prepared or used by the firm/associated person, materials provided to the customer must be produced. The amendments would also specify that sales literature and performance or risk data must be produced. FINRA proposes to delete the alternative procedure provided in this Item because this two-step production causes delays in the discovery process. Disputes about the details contained on the lists often arise, resulting in parties requesting production of every item on the list. Current List 9 would be renumbered as List 7.

**List 10—Negligence/Breach of Fiduciary Duty (Customer)**

The contents of current List 10 (Negligence/Breach of Fiduciary Duty (Customer)) are being moved to proposed List 2, as described above. FINRA proposes to revise List 10 to require the customer to produce copies of all materials received or obtained

from any source relating to the transactions or products at issue, and other prospective investments, including research reports, sales literature, performance or risk data, prospectuses, and other offering documents, including documents intended or identified as being “for internal use only,” and worksheets or notes. Current List 10 would be renumbered as List 8.

**List 11—Unauthorized Trading (Firm/Associated Person)**

Current List 11, Item 1 requires the production of order tickets for the customer's transaction(s) at issue. FINRA proposes to amend this Item to specify that for all allegedly unauthorized transactions at issue in the Statement of Claim, the firm/associated person is required to produce a memorandum of each order or instruction given as well as documentation showing the compensation, gross and net, to the associated person for each such transaction. The term “order ticket” would be replaced with the term “memorandum of each order” to reflect the current use of various order management systems by FINRA member firms. FINRA would require documentation of compensation for each transaction because such information may provide evidence of the Associated person's motivation for executing a particular trade.

FINRA does not propose to change current List 11, Items 2 and 3.

FINRA proposes to adopt new List 11, Item 4 to require the production of commission runs or other documents showing all trading by the associated person in the security at issue from ten trading days before until ten trading days after each transaction the customer alleges was unauthorized. The firm/associated person would be permitted to redact customer names but would be required to disclose the security traded, dates traded, whether trades were solicited or unsolicited and gross and net commission from each trade. These documents may reflect a pattern of trading behavior by the association persons. List 11 would be renumbered as List 9.

**List 12—Unauthorized Trading (Customer)**

FINRA does not propose to current change List 12, Items 1 and 2. List 12 would be renumbered as List 10.

**List 13—Unsuitability (Firm/Associated Person)**

Current List 13, Item 1 requires production of all materials prepared,



used, or reviewed by the firm/associated person related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the associated person reviewed or read such documents. As an alternative, the firm/associated person is permitted to produce a list of such documents. Upon further request by a party, the firm/associated person is required to provide any documents identified on the list. FINRA proposes to clarify this List by specifying that in addition to materials prepared or used by the firm/associated person, materials provided to the customer must also be produced. In addition, the proposal also specifies that sales literature and performance or risk data must be produced. FINRA proposes to delete the alternative procedure provided in this Item because this two-step production causes delays in the discovery process. Disputes about the details contained on the lists often arise, resulting in parties requesting production of every item on the list.

Current List 13, Item 2 requires the production of documents sufficient to describe the basis upon which the associated person was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including any bonus or incentive program and all compensation and commission schedules showing compensation received or to be received. FINRA proposes to amend Item 2 to specify that documents reflecting agreements between the firm and associated person relating to compensation (including those concerning fee-based accounts) must be produced for the relevant time period. The proposal would eliminate required production of schedules showing compensation received or to be received.

FINRA proposes to adopt new List 13, Item 3 to require the production of all documents between the firm/associated person and the customer relating to asset allocation, diversification, trading strategies and market conditions related to the customer's account(s). These documents may provide valuable insight into the reasons for particular trading decisions and are germane to an allegation of unsuitability. List 13 would be renumbered as List 11.

#### List 14—Unsuitability (Customer)

FINRA proposes to move current List 14 (Unsuitability-Customer), Items 1 through 4, to List 2, as discussed above.

This would expand required production of these documents to all customer cases.

FINRA proposes to adopt new List 12, Claims Involving Particular Products or Securities. The Items on this list are designed to provide the parties with information about transactions in the customer accounts of an associated person and the commission earned on those transactions. FINRA proposes to limit discovery to five securities/products selected by the customer to minimize delays in the discovery process.

New List 12, Item 1 would require the firm/associated person to produce a record concerning trading activity in the customer's account(s) for a maximum of five securities and/or products selected by the customer claimant. The following would be required for each of the securities selected:

- Last four digits of the non-party customer account number;
- Trade activity (*i.e.*, buy, sell);
- Number of shares, unit price, and dollar value of transaction;
- Date traded;
- Solicited or unsolicited; and
- Gross and net commission.

New List 12, Item 2 would provide that, in giving a response to Item 1, the firm may redact the names of persons other than the customer, but should provide sufficient information to identify the customer's account, the associated person's own accounts, and the type of account. The proposal would require the information to be provided for a period of time beginning six months before and ending six months after the transactions at issue in the customer's account. If the customer seeks production of information related to more than five products or securities, a separate request would have to be made; however, the information would not be deemed presumptively discoverable. In addition, the firm would be required to identify related accounts of the associated person that traded in these securities or products at the firm during the relevant time period.

New List 12, Item 3 would provide that, if an insurance product that provides a death benefit is included in the Statement of Claim, the firm/associated person must produce all information concerning the customer's insurance holdings and any recommendations made to the customer regarding insurance products.

If the Statement of Claim includes an insurance product that provides a death benefit, New List 12, Item 4 would require the customer to produce all insurance information received from an insurance sales agent or broker.

New List 12, Item 5 would require the firm/associated person to produce a record of all agreements pertaining to the relationship between the associated person and the firm, summarizing the associated person's compensation arrangement or plan with the firm, including commission and concession schedules, bonus or incentive plans, schedules showing compensation received or to be received based upon volume, type of product, nature of trade, (*agency v. principal*) etc. and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation was determined.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that these updates to the Discovery Guide will reduce the number and limit the scope of disputes involving document productions and other matters, thereby improving the arbitration process for the benefit of the public investors, broker-dealer firms, and associated persons who use the forum.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).



(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-024 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-024 and

should be submitted on or before April 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-5389 Filed 3-12-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59525; File No. SR-NYSEArca-2009-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges Applicable to the Option Strategy Executions Pilot Program

March 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 27, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca is proposing to amend its Schedule of Fees and Charges in order to extend the pilot program that applies to Option Strategy Executions ("Pilot Program") until March 1, 2010. The text of the proposed rule change is attached as Exhibit 5.<sup>5</sup> A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at NYSE Arca, the Commission's Public Reference Room, and at <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

The purpose of this proposed rule change is to extend the Pilot Program that applies to Option Strategy Executions until March 1, 2010. The transactions included as part of the Pilot Program include reversals and conversions,<sup>6</sup> dividend spreads,<sup>7</sup> box spreads,<sup>8</sup> short stock interest spreads,<sup>9</sup> and merger spreads.<sup>10</sup> Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at \$750 per strategy execution that are executed on the same trading day in the same option class. In addition, there is also a monthly cap of \$25,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange is able to attract liquidity by

<sup>6</sup> Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

<sup>7</sup> Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

<sup>8</sup> Box Spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

<sup>9</sup> A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

<sup>10</sup> A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.

accommodating these transactions. Extending the Pilot Program until March 1, 2010 will allow the Exchange to keep these fees low and thus continue to attract liquidity.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) to qualify for the cap.

## 2. Statutory Basis

The proposal is consistent with Section 6(b) <sup>11</sup> of the Act, in general, and Section 6(b)(4), <sup>12</sup> in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. The Exchange believes that, as proposed, the cap on transaction fees for Strategy Executions applies equally to each member (ETP holder) of the Exchange. The Exchange further believes that by keeping fees low with the proposed cap, the Exchange is able to attract liquidity by accommodating these transactions.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act <sup>13</sup> and Rule 19b-4(f)(2) <sup>14</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-16 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-16 and should be submitted on or before April 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-5388 Filed 3-12-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59517; File No. SR-NYSEALTR-2009-23]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Permit Two Trading Officials To Modify the Required Bid/Ask Differentials**

March 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that, on March 3, 2009, NYSE Alternext U.S. LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder, <sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Exchange Rule 925NY—Obligations of Market Makers. The text of the proposed rule change is attached as Exhibit 5. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to adopt a provision which will allow the Exchange to establish different quote differentials other than what is provided for in Rule 925NY(b)(5). The proposed rule language is substantially similar to what has been approved for, and is presently in place at, the Chicago Board Options Exchange ("CBOE").<sup>5</sup>

Pursuant to Rule 925NY(b), Market Makers on NYSE Amex are required to submit electronic quotations within certain bid/ask differentials. Subsection (5) of this rule states that following an Auction, options traded on NYSE Amex may be quoted with a difference not to exceed \$5 between the bid and offer. NYSE Amex now proposes to add a provision that will allow the Exchange to establish different bid/ask differentials for certain series.

Situations may arise where the \$5 differential provided for in Rule 925NY(b)(5) is overly restrictive; this has shown to be the case when extreme price fluctuations coupled with increased volatility in an underlying security makes it extremely difficult to accurately calculate the price of a given options series. To address these concerns, the CBOE has established modified bid/ask differentials in certain options series, pursuant to CBOE Rule 8.7(b)(iv).<sup>6</sup> This proposed rule change seeks only to allow the Exchange to offer NYSE Amex Market Makers the same quote relief that is offered to Market Makers on the CBOE.

The Exchange envisions establishing quote differentials wider than \$5 in very limited situations. In addition, if the Exchange were to establish modified bid/ask differentials it would do so with the contingency that the disseminated markets in affected series would remain competitive and remain narrower than the relief granted, whenever possible.

The CBOE rule states that "the Exchange" may establish bid/ask differences other than what is provided

for in their rules. NYSE Amex proposes that the decision to establish different quote differentials will be made by two Trading Officials.<sup>7</sup> In the case of NYSE Amex, two Trading Officials will collectively make the determination on behalf of the Exchange. This is the only difference between the CBOE rule text and the proposed rule text for NYSE Amex.

The Exchange notes that Rule 925NY(b) was adopted when the Commission approved SR-NYSEALTR-2008-14, on February 27, 2009.<sup>8</sup> This rule change was filed in conjunction with the NYSE Amex move to a new trading facility and the implementation of a new electronic trading system. Prior to the rule change, NYSE Amex Rule 958-ANTE governed the bid-ask differentials for electronic quoting on NYSE Amex. Rule 958-ANTE(c)(i) contained a similar provision to what is proposed in this filing, which authorized the Exchange to establish differences other than what was prescribed in the rule. So, while this proposal does amend the rules presently in effect for NYSE Amex, the concept of allowing the Exchange to establish quote differentials, other than what is prescribed in the rules, is not without precedent.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change is appropriate in that it creates a mechanism whereas Market Makers will be able to provide two side quotations even in situations where it is difficult to accurately calculate the price of given options series.

<sup>7</sup> A Trading Official is an Exchange Employee that has been designated as such by the Chief Executive Officer, or the Chief Regulatory Officer, pursuant to Rule 900.2NY(82).

<sup>8</sup> See Securities and Exchange Act Release No. 34-59472, February 27, 2009. This Approval Order had not yet been published in the *Federal Register* at the time this proposal was filed.

<sup>9</sup> 15 U.S.C. 78f (b).

<sup>10</sup> 15 U.S.C. 78f (b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request.<sup>13</sup> The proposed rule change is substantially similar to a rule of the CBOE and does not raise any novel or significant issues. Therefore, the Commission believes that waiving the 30-day period to allow the proposed rule change to become operative upon filing is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is waiving the five-day pre-filing requirement in this case.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> See CBOE Rule 8.7(b)(iv)(C)(ii).

<sup>6</sup> See CBOE Bid/Ask Circular 09-02 (January 7, 2009) establishing modified bid/ask differentials pursuant to CBOE Rule 8.7(b)(iv).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEALTR-2009-23 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEALTR-2009-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEALTR-2009-23 and should be submitted on or before April 3, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-5386 Filed 3-12-09; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #11686 and #11687]**

##### **Indiana Disaster #IN-00029**

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana (FEMA-1828-DR), dated 03/05/2009.

*Incident:* Severe Winter Storm.

*Incident Period:* 01/26/2009 through 01/28/2009.

*Dates:* Effective Date: 03/05/2009.

*Physical Loan Application Deadline Date:* 05/04/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 03/05/2009, Private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Clark, Crawford, Dubois, Floyd Gibson, Harrison, Jackson, Jefferson, Orange, Perry, Spencer, Switzerland, Vanderburgh, Warrick, Washington

*The Interest Rates are:*

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	4.000

The number assigned to this disaster for physical damage is 11686B and for economic injury is 11687B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Roger B. Garland,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9-5410 Filed 3-12-09; 8:45 am]

**BILLING CODE 8025-01-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Railroad Administration**

**[Docket No. FRA-2009-0016]**

##### **Metrics and Standards for Intercity Passenger Rail Service Under Section 207 of Public Law 110-432**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with section 207 of the Passenger Rail Investment and Improvement Act of 2008 (Division B of Pub. L. 110-432), the FRA and the National Railroad Passenger Corporation (Amtrak) have jointly drafted performance metrics and standards for intercity passenger rail service, and are requesting comments on that draft from the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, nonprofit employee organizations representing Amtrak employees, and groups representing Amtrak passengers. The draft document, entitled "Proposed Metrics and Standards for Intercity Passenger Rail Service," is available on the FRA's Web site at <http://www.fra.dot.gov/us/content/2165>. Comments may be submitted to the corresponding docket (number FRA-2009-0016) at [www.regulations.gov](http://www.regulations.gov) and will be considered before the finalized Section 207 metrics and standards are adopted.

**DATES:** The comment period will commence on Friday, March 13, 2009 and Comments must be received by Friday, March 27, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

**ADDRESSES:** Comments for Docket No. FRA-2009-0016 should be filed at the Federal portal <http://www.regulations.gov>. Follow the Web site's online instructions for submitting comments.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

**FOR FURTHER INFORMATION CONTACT:** Neil E. Moyer, Chief, Intercity Passenger Rail Analysis Division, U.S. Department of Transportation, Federal Railroad Administration (e-mail [Neil.Moyer@dot.gov](mailto:Neil.Moyer@dot.gov); telephone 202-493-6365); or Ed Courtemanch, Sr. Principal, Operations Service Planning, Amtrak (e-mail [CourteE@amtrak.com](mailto:CourteE@amtrak.com); telephone 202-906-3249).

Issued in Washington, DC, on March 9, 2009.

**Neil Moyer,**

Chief, Intercity Passenger Rail Analysis Division.

[FR Doc. E9-5513 Filed 3-12-09; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition for Exemption From the Vehicle Theft Prevention Standard; Volkswagen

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of Volkswagen Group of America (VW) in accordance with 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard*, for the Audi A3 vehicle line beginning with model year (MY) 2010. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with model year (MY) 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, W43-439, Washington, DC 20590. Ms. Ballard's phone number is (202) 366-0846. Her fax number is (202) 493-2990.

**SUPPLEMENTARY INFORMATION:** In a petition dated November 10, 2008, VW requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Audi A3 vehicle line beginning with MY 2010. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*,

based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, VW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new Audi A3 vehicle line. VW will install its passive, transponder-based, electronic immobilizer antitheft device as standard equipment on its Audi A3 vehicle line beginning with MY 2010. Key components of the antitheft device will include a passive immobilizer, an immobilizer control unit, a mechanical ignition lock with immobilizer reading coil, an adapted ignition key, and an engine control unit. The antitheft device will not include an audible or visible alarm feature as standard equipment. VW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

VW stated that once the driver/operator turns on the ignition, the key transponder sends a fixed code to the immobilizer control unit. If this is identified as the correct code, a variable code is generated in the immobilizer control unit and sent to the transponder. A secret arithmetic process is then started in the transponder and the control unit according to a set of specific equations. The results of the computing process is evaluated in the control unit and if they tally, the vehicle key is acknowledged as correct. The engine control unit then sends a variable code to the immobilizer control unit, enabling start up of the vehicle. VW stated that a new variable code is generated each time during this secret computing process. Therefore, VW believes that the code is undecipherable and impossible to duplicate.

In addressing the specific content requirements of 543.6, VW provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, VW conducted tests based on its own specified standards. VW provided a detailed list of the tests conducted (i.e., electrical system temperature stability, mechanical integrity, electrical performance, environmental compatibility and service life) and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Additionally, VW stated that after adapting in the electronic module of the key transponder has been initiated, a pairing between the key and the

immobilizer occurs at which point the key can no longer be used for any other immobilizer.

In supplementary information submitted to the agency on January 12, 2009, VW stated that since the Audi A3 has only been equipped with a standard immobilizer and alarm since its introduction in MY 2006, there is no comparative Audi data available for the Audi A3 without an immobilizer. VW also stated that the agency's MY 2006 theft data published in the **Federal Register** on October 14, 2008, reported that the Audi A3 had a theft rate of 1.0751 which is below the median. VW also provided data on the theft reduction benefits experienced by other vehicle lines installed with immobilizer devices that have recently been granted petitions for exemptions by the agency. VW has concluded that the antitheft device proposed for its Audi A3 vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements. The agency agrees that the device is substantially similar to devices in these and other vehicle lines for which the agency has already granted exemptions.

Based on the evidence submitted by VW, the agency believes that the antitheft device for the Audi A3 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that VW has provided adequate reasons for its belief that the antitheft device for the Audi A3 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information VW provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption for the Audi A3 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If VW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission

of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 10, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E9-5477 Filed 3-12-09; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Actions on Special Permit Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on Special Permit Applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on special permits applications in (June to March 2009). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5 Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on March 3, 2009.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
<b>MODIFICATION SPECIAL PERMIT GRANTED</b>				
14656-M .....	.....	PurePak Technology, Chandler, AZ.	49 CFR 173.158(f)(3) .....	To modify the special permit to authorize a smaller Corporation outer packaging.
14488-M .....	PHMSA-08-0190 ..	Sanofi Pasteur, Swiftwater, PA.	49 CFR 173.24(b)(1) .....	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of an influenza vaccine in a custom stainless steel batch reactor and to allow for renewal.
13133-M .....	RSPA-02-13796 ...	Department of Energy, Albuquerque, NM.	49 CFR 172.320; 173.54(a); 173.56(b); 173.57; 173.58; 173.62.	To modify the special permit to remove the sample limitation.
14694-M .....	PHMSA-08-0113 ..	Department of Defense, Scott AFB, IL.	49 CFR 173.62 .....	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of certain equipment contaminated with explosives in non-DOT specification packaging.
12155-M .....	.....	S&C Electric Company, Chicago, IL.	49 CFR 172.301(c); 173.304.	To modify the special permit to remove the placarding requirement when transporting by motor vehicle.
11379-M .....	.....	TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the special permit to allow the transportation in commerce of an additional Division 1.4G and Division 2.2 material.
14576-M .....	.....	Structural Composites Industries (SCI), Pomona, CA.	49 CFR 173.302a and 173.304a.	To modify the special permit to authorize an increase in the maximum water volume from 300 liters to 315 liters.

S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
14736-M .....	.....	Department of Defense, Scott AFB, IL.	49 CFR 172.101 Table Column (9B) and (10A) and § 173.227.	To modify the special permit to authorize the use of alternative overpacks.
14754-M .....	.....	Sierra Chemical, Sparks, NV.	49 CFR 178.3 .....	To reissue the special permit originally issued on a Company emergency basis for the transportation in commerce of approximately 72,000 1-gallon polyethylene bottles that are transported under the provisions of DOT-SP 6614 except they have not been marked with the name or symbol of the bottle producer.
12574-M .....	RSPA-00-8318 .....	Weldship Corporation, Bethlehem, PA.	49 CFR 172.302(c)(2), (3), (4), (5); Subpart F of Part 180.	To modify the special permit to conform with CGA in that only one pressure relief device is required for certain gases.
14546-M .....	PHMSA-07-28832	Linde North America Inc. (formerly BOC Gases), Murray Hill, NJ.	49 CFR 180.209 .....	To modify the special permit to remove the five year visual inspection requirement.
14652-M .....	PHMSA-08-0043 ..	Magnum Mud Equipment Co., Inc., Houma, LA.	49 CFR 171.14(d)(4) .....	To modify the special permit to authorize cargo vessel as an additional mode of transportation.
11516-M .....	.....	Bridgeview Aerosol, LLC, Bridgeview, IL.	49 CFR 173.306(a)(3) ....	To modify the special permit to authorize an additional Division 2.2 material.
11721-M .....	.....	Coleman Company, Inc., The Maize, KS.	49 CFR 178.65-4(c)(1) ..	To modify the special permit to authorize an additional Division 2.1 flammable gas.
12102-M .....	.....	Veolia ES Technical Solutions, L.L.C., Flanders, NJ.	49 CFR 173.56(i); 173.56(b).	To modify the special permit to authorize the transportation in commerce of an additional Class 3 and Division 4.1 hazardous material.
8215-M .....	.....	Olin Corporation, Winchester Division (Former Grantee: Olin Corporation, Brass and Winchester, Inc.), East Alton, IL.	49 CFR Part 172, Subpart E; 172.320; 173.62(c); 173.212; 172.504(e).	To modify the special permit to add a specially designed truck to haul hazardous materials.
14732-M .....	.....	Johnson Controls Rental Solutions, Indianapolis, IN.	49 CFR 173.306(e)(1) ....	To reissue the special permit originally issued on the emergency basis for transportation in commerce of reconditioned (used) refrigerating machines containing a group A1 refrigerant by motor vehicle.
14715-M .....	.....	The Linde Group, Murray Hill, NJ.	49 CFR 173.301(d)(2); 173.302(a)(3); 178.37-5.	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of DOT Specification 3AAX cylinders made of 4130X steel for transportation of a compressed natural gas.
12690-M .....	.....	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2), Note 2.	To modify the special permit to authorize ultrasonic testing of cylinders and to add a drawing.
6614-M .....	.....	Auto-Chlor System, Memphis, TN.	49 CFR 173.202; 173.203.	To modify the special permit to authorize the transportation in commerce of an additional Class 8 material in non-DOT specification polyethylene bottles placed in a polyethylene crate.
14287-M .....	.....	Troxler Electronic Laboratories, Inc., Research Triangle Park, NC.	49 CFR 173.431 .....	To modify the special permit to authorize an additional source capsule model number.
14158-M .....	.....	UTC Power Corporation, South Windsor, CT.	49 CFR 176.83 .....	To modify the special permit to authorize more than one package of a Division 4.2 solid in the same assembly unit with more than one package of Class 8 liquids.
14702-M .....	.....	CRI/Criterion, Inc. and its affiliate businesses, Houston, TX.	49 CFR 178.812(a) and 178.801(i).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of approximately 2,500 UN11HG2W, UN11HH2 and UN11HH2W certified intermediate bulk containers that do not meet all the requirements of the competent authority approval that authorized their manufacture.

S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
14283-M .....	.....	U.S. Department of Energy (DOE), Washington, DC.	49 CFR Part 172, Subparts E, F; 171.15; 171.16; 172.202; 172.203(c)(1)(i); 172.203(d)(1); 172.310; 172.316(a)(7); 172.331(b)(2); 172.332; 173.403(c); 173.425(c)(1)(iii); 173.425(c)(5); 173.443(a); 174.24; 174.25; 174.45; 174.59; 174.700; 174.715; 177.807; 177.843(a).	To modify the special permit to clarify the use of flat rail cars with capacity of four intermodal containers and maximum capacity of 160 tons.
14544-M .....	.....	DS Containers, Inc., Batavia, IL.	49 CFR 173.306(a)(3)(v)	To modify the special permit to authorize cargo aircraft as an approved mode of transportation.
12930-M .....	.....	Roeder Cartage Company, Inc., Lima, OH.	49 CFR 180.407(c), (e) and (f).	To modify the special permit to add an additional cargo tank.
14772-M .....	.....	Alpha-Omega Services, Inc., Beilflower, CA.	49 CFR 173.413 .....	To reissue the special permit originally issued on an emergency basis to authorize use of Type B packages for transportation in commerce of radioactive materials.
14437-M .....	.....	Columbiana Boiler Company (CBCo), LLC, Columbiana, OH.	49 CFR 179.300 .....	To modify the special permit to remove the requirement to report all repairs made to pressure vessels.
14700-M .....	.....	Fleck Controls, LLC, Chardon, OH.	49 CFR 173.302a and 173.306(g).	To modify the special permit to authorize an increase to the tank's maximum operating pressure from 100 psig to 125 psig.
14649-M .....	.....	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173.62(b), 172.101 column (8C), 173.60(b)(8), 172.300 and 172.400.	To modify the special permit to authorize an additional Division 1.4C hazardous material.
11666-M .....	.....	Alcoa, Inc., Pittsburgh, PA.	49 CFR 173.240(b) .....	To modify the special permit to authorize the addition of intermodal containers and unitizing the electrodes with steel banding to wooden runners or to wooden pallets.
10869-M .....	.....	Norris Cylinder Company, Longview, TX.	49 CFR 173.301(b); 173.302(a)(5); 173.304(a); 175.3.	To modify the special permit to authorize an increase of 2 inches to the length of the cylinder.

## NEW SPECIAL PERMIT GRANTED

14728-N .....	PHMSA-08-0177 ..	International Isotopes Inc., Idaho Falls, ID.	49 CFR 173.416(c) .....	To authorize the transportation in commerce of existing Type B packagings constructed to DOT-Specification 6M, 20 WC or 21WC for the transportation of radioactive material by motor vehicle. (mode 1)
14734-N .....	PHMSA-08-0196 ..	Chlor Alkal, Olin Corporation, Cleveland, TN.	49 CFR 172.203(a), 173.26 and 179.13.	To authorize the transportation in commerce of Sodium hypochlorite in DOT specification 111A100W5 tank car tanks that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2)
14739-N .....	PHMSA-08-0200 ..	Battery Council International (BCI), Chicago, IL.	49 CFR 172.316 .....	To authorize the transportation in commerce of certain Consumer commodities that have been overpacked and do not have the correct markings on the inner package when transported by motor vehicle. (mode 1)
14741-N .....	PHMSA-08-0202 ..	Weatherford International, Fort Worth, TX.	49 CFR 173.304 .....	To authorize the transportation in commerce of sulfur hexafluoride in non-DOT specification cylinders. (modes 1, 3, 4, 5)
14743-N .....	PHMSA-08-0209 ..	TIER DE, Inc., Gap, PA	49 CFR 173.24b and 173.244.	To authorize the one-time, one-way transportation in commerce of a non-DOT specification metal tank containing approximately 700 lbs. of sodium by motor vehicle. (mode 1)
14744-N .....	PHMSA-08-0203 ..	Sandia National Laboratories, Albuquerque, NM.	49 CFR 173.24(b)(1) and 173.302a.	To authorize the transportation in commerce of DOT Specification 3AA and ICC 3A cylinders containing nitrogen, compressed, and a non-DOT specification refrigeration system containing helium that are installed in the Advance Flight Telescope (AFT) Payload where the cylinders release nitrogen into the satellite telescope during transportation. (modes 1, 4, 5)



S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
14751-N .....	PHMSA-08-0253 ..	ExxonMobil, Mont Belvieu, TX.	49 CFR 173.242 .....	To authorize the transportation in commerce of an Organometallic substance, solid in a non-DOT specification portable tank. (modes 1, 2, 3)
14762-N .....	PHMSA-08-0252 ..	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.173, 173.242, 172.326 and 172.504.	To authorize the transportation in commerce of certain open-top cylindrical mixing tanks containing the residue of a Class 3 hazardous material by motor vehicle. (mode 1)
14763-N .....	PHMSA-08-0242 ..	Weatherford International, Fort Worth, TX.	49 CFR 173.302a and 173.301(f).	To authorize the manufacture, marking, sale and use of a non-DOT specification cylinder similar to a DOT Specification 3A cylinder for transportation of hydrocarbon formation fluid sample from oil well sites. (modes 1, 2, 3, 4, 5)
14765-N .....	PHMSA-08-0254 ..	Chemtrade Logistics, Inc., Chicago, IL.	49 CFR 180.407 .....	To authorize the transportation in commerce of certain DOT Specification MC 312 and DOT 412 cargo tanks containing sulfuric acid that have been tested using alternative methods. (mode 1)
14766-N .....	PHMSA-08-0250 ..	JL Shepherd & Associates, San Fernando, CA.	49 CFR 173.416 .....	To authorize the continued transportation in commerce of certain DOT Specification 20WC radioactive material packagings after October 1, 2008. (mode 1)
14768-N .....	PHMSA-08-0251 ..	Tobin & Sons Moving and Storage, Inc., Peabody, MA.	49 CFR 173.196 .....	To authorize the transportation of certain infectious substances by motor vehicle in alternative packaging (freezers). (mode 1)
14769-N .....	PHMSA-08-0248 ..	Pfizer, Inc., Memphis, TN	49 CFR 173.199 .....	To authorize the one-way transportation in commerce of certain infectious substances in alternative packaging (freezers). (mode 1)
14770-N .....	PHMSA-08-0243 ..	Dow Chemical Company, Midland, MI.	49 CFR 173.242 .....	To authorize the transportation in commerce of a Division 4.3 organometallic substance in a non-DOT specification portable tank. (modes 1, 2, 3)
14776-N .....	PHMSA-08-0276 ..	Dollar General Corporation, Scottsville, KY.	49 CFR 173.213, 172.301(a) and 172.400(a).	To authorize the one-way transportation in commerce of Class 9 hazardous waste in palletized non-DOT specification packaging with alternative marking and labeling. (mode 1)
14777-N .....	PHMSA-8-0273 ....	General Dynamics, Marion, IL.	49 CFR 173.213 .....	To authorize the one-way transportation in commerce of Class 9 hazardous waste in alternative packaging for approximately 8 miles by motor vehicle. (mode 1)
14782-N .....	PHMSA-08-0312 ..	Southern States, LLC, Atlanta, GA.	49 CFR 173.304a .....	To authorize the transportation in commerce of large pieces of electrical equipment containing a chamber which holds sulfur hexafluoride in alternative packaging. (modes 1, 2, 3)
14784-N .....	PHMSA-08-0311 ..	Weldship Corporation, Bethlehem, PA.	49 CFR 180.209(a) and (b).	To authorize the requalification of certain DOT-Specification cylinders containing Division 2.1 and 2.2 gases every ten years. (modes 1,2,3)
14786-N .....	PHMSA-08-0313 ..	Fruit of the Earth, Inc., Fort Worth, TX.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of certain non-refillable aluminum cylindrical containers that are leak tested by an automated in-line pressure check in lieu of the required hot water bath. (modes 1, 2, 3, 4, 5)
14787-N .....	PHMSA-8-0310 ....	Flexcon Industries, Randolph, MA.	49 CFR 173.306(g) .....	To authorize the transportation in commerce of certain fiber reinforced plastic composite cylinders containing compressed air under the exception in 49 CFR 173.306(g). (modes 1,2,3)
14789-N .....	.....	Blasting Solutions, Inc., Syracuse, UT.	49 CFR 177.835(g) .....	To authorize the transportation in commerce of certain detonator assemblies on the same motor vehicle with any other Class I explosives when they are in separate and isolated cargo-carrying compartments powered by the same tractor. (mode 1)
14791-N .....	.....	Heliquest International Inc., Montrose, CO.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To authorize the transportation of certain forbidden explosives and other hazardous materials by helicopter in remote areas of the US for seismic exploration without being subject to hazard communication requirements and quantity limitations. (mode 4)
14756-N .....	PHMSA-08-0240 ..	Univation Technologies, LLC, Houston, TX.	49 CFR 173.242 .....	To authorize the transportation in commerce of a Division 4.2 hazardous material in a non-DOT specification portable tank. (modes 1,3)

S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
<b>EMERGENCY SPECIAL PERMIT GRANTED</b>				
EE 14639-M	PHMSA-08-0026 ..	Seacon Corporation .....	49 CFR 172.407 .....	To modify the special permit to extend the expiration Charlotte, NC date in order to avoid significant economic loss. (mode 1)
EE 9421-M ..	.....	Taylor-Wharton Harsco GasServ, Harrisburg, PA.	49 CFR 173.302; 173.304; 173.301(h); 173.34(a)(1); 178.37; 175.3.	To modify the special permit to authorize an alternative immersion UE test system for non-DOT specification steel cylinders transporting certain Division 2.1, 2.2 and 2.3 materials. (modes 1,2,3)
FE 14392-M	.....	Department of Defense, Ft. Eustis, VA.	49 CFR 172.101 Column (10B); 176.65, 176.83(a)(b)(g), 176.84(c)(2); 176.136; and 176.144(a).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of explosives by vessel in an alternative stowage configuration. (mode 3)
EE 6810-M ..	.....	CCH Equipment Company, Dallas, TX.	49 CFR 173.302(a)(1); 173.314(c).	To modify the special permit to add Division 2.2 hazardous materials. (mode 1)
EE 1736-M ..	.....	ConocoPhillips, Anchorage, AK.	49 CFR 172.101 Table, Col. (9B).	To modify the special permit to add Methanol. (mode 4)
EE 11536-M	.....	Boeing Company, The, Los Angeles, CA.	49 CFR 173.102 Spec. Prov. 101; 173.24(g); 173.62; 173.202; 173.304; 175.3.	To modify the special permit to authorize the transportation in commerce of Division 4.3 materials. (modes 1,3,4)
EE 14732-N	.....	Johnson Controls Rental Solutions, Indianapolis, IN.	49 CFR 173.306(e)(1) ....	To authorize the transportation in commerce of reconditioned (used) refrigerating machines containing a group A1 refrigerant by motor vehicle. (mode 1)
EE 14735-N	.....	Teledyne Energy Systems, Inc., Hunt Valley, MD.	49 CFR 173.222(c) .....	To authorize the transportation in commerce of certain hydrogen generators containing potassium hydroxide solution in excess of the amount authorized for shipment as Dangerous Goods in Apparatus. (modes 1,2,3,4)
EE 14736-N	.....	Department of Defense, Scott AFB, IL.	49 CFR 172.101 Table Column (9B) and (10A) and § 173.227.	To authorize the transportation in commerce of Nitric acid, red fuming in alternative packaging. (modes 1, 3, 4)
EE 14737-N	.....	Florida Air Transport Inc., Opa Locka, FL.	49 CFR 172.101 Column (9B).	To authorize the air transportation in commerce of certain explosives which are forbidden for shipment by cargo-only aircraft. (mode 4)
EE 14749-N	.....	U.S. Environmental Protection Agency, Chicago, IL.	49 CFR 49 CFR Parts 171-180.	To authorize the transportation in commerce of hazardous materials used to support the recovery and relief efforts from and within the EPA Region 5 FEMA flood disaster areas under conditions that may not meet the requirements of the Hazardous Materials Regulations. (mode 1)
EE 14752-N	.....	General Dynamics, Marion, IL.	49 CFR 178.503(a) .....	To authorize the one-time, one-way transportation in commerce of approximately 6,000 UN4G fiberboard boxes containing Division 1.4 explosives which have the performance standards marked incorrectly. (mode 1)
EE 14753-N	.....	John G. Shedd Aquarium, Chicago, IL.	49 CFR 173.24(b)(1), 173.301(b).	To authorize the transportation in commerce of one cylinder containing compressed oxygen, accompanying several dolphins and whales that need to be relocated, for use only in the event of respiratory distress of the animals. (mode 4)
EE 14754-N	.....	Sierra Chemical, Chicago, IL Company, Sparks, NV.	49 CFR 178.3 173.301(b).	To authorize the transportation in commerce of approximately 72,000 1-gallon polyethylene bottles that are transported under the provisions of DOT-SP 6614 except they have not been marked with the name or symbol of the bottle producer. (mode 1)
EE 14755-N	.....	Fertilizer Institute, The, Washington, DC.	49 CFR 171.23(b)(10) and 172.502(b)(1).	To authorize the transportation in commerce of Anhydrous ammonia transported between the US and Canada with the newly implemented Canadian Anhydrous Ammonia placard. (modes 1, 2)
EE 14757-N	.....	Orbital Sciences Corporation, Dulles, VA.	9 CFR 172.101, 173.301(t), 173.302a(a)(1), 173.304a(a)(2) and 175.3.	To authorize the one-time transportation in commerce of certain non-DOT specification containers containing certain 2.1, 2.2 and 2.3 liquefied and compressed gases. (modes 1, 4)

S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
EE 14758-N	.....	United States Environmental Protection Agency (Region 6), Dallas, TX.	9 CFR Parts 171-180 ....	This emergency special permit authorizes the transportation in commerce of hazardous materials used to support the Hurricane Gustav recovery efforts. (mode 1)
EE 14772-N	.....	Alpha-Omega Services, Inc., Bellflower, CA.	49 CFR 173.413 .....	To authorize the continued use of Type B packages for the transportation in commerce of radioactive materials.
EE 14773-N	.....	Pacific Northwest National Laboratory (PNNL), Richland, WA.	49 CFR 173.416 .....	To authorize the transportation in commerce of a fissile material in a non DOT specification packaging.
EE 14781-N	.....	CCH Equipment Company, Dallas, TX.	49 CFR 173.302a and 173.3 14.	To authorize the transportation in commerce of compressed hydrogen in manifolded and framed non-DOT specification seamless steel cylinders originally certified as Specification DOT-107A seamless steel tank car tanks. (mode 1)
EE 14788-N	.....	New York State Department of Environmental Conservation, Albany, NY.	49 CFR 173.241 .....	To authorize the transportation in commerce of capacitors containing polychlorinated biphenyls in a non-DOT Specification closed bulk bin. (mode 1)
EE 14790-N	.....	Cargill, Incorporated and its affiliated companies, Minneapolis, MN.	49 CFR 49 CFR Parts 171-180.	To authorize the transportation in commerce of Seed cake, which is not mechanically extruded, as not subject to the Hazardous Materials Regulations. (modes 1, 3)
EE 14800-N	.....	Ansul Incorporated d/b/a Tyco Fire Suppression and Building Products, Marinette, WI.	49 CFR 173.301, 173.302a and 173.309.	To authorize the transportation in commerce of approximately 2,000 non-specification cylinders charged with a nonflammable, nontoxic potassium carbonate-based solution as Fire extinguishers, UN 1044 when transported for installation as part of a kitchen fire suppression system. (modes 1, 2)
EE 14805-N	.....	Pacific Bio-Material Management, Inc., dba Pacific Scientific Transport, Fresno, CA.	49 CFR 173.150 .....	To authorize the transportation in commerce of limited quantities certain flammable liquids in alternative packaging. (mode 1)

**MODIFICATION SPECIAL PERMIT WITHDRAWN**

11526-M .....	.....	Linde North America, Inc., Bear, DE.	49 CFR 172.302(c), (2), (3), (4), (5); 173.34(e)(1), (3), (4), (8); 173.34(15)(vi).	To modify the special permit to authorize UE examination of certain cylinders manufactured under other specified special permits.
12399-M .....	.....	Linde North America, Inc., Murray Hill, NJ.	49 CFR 173.34(e)(1); 173.34(e)(3); 173.34(e)(4); 173.34(e)(8); 173.34(e)(14); 173.34(e)(15)(vi).	To modify the special permit to authorize removal of a test procedure for cylinders no longer in use by the applicant.

**NEW SPECIAL PERMIT WITHDRAWN**

14740-N .....	PHMSA-08-0201 ..	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(c) and (f) and 173.40.	To authorize the transportation in commerce of certain DOT-specification cylinders containing nitric oxide that do not meet the requirements for pressure relief devices. (modes 1, 3)
14746-N .....	PHMSA-08-0204 ..	Preferred Foam Products, Inc., Clinton, CT.	49 CFR 173.315(a) .....	To authorize the transportation in commerce of certain non-DOT specification portable tanks containing a Division 2.2 compressed gas. (modes 1, 2)
14780-N .....	PHMSA-08-0277 ..	Flexcon Industries, Randolph, MA.	49 CFR 173.115(b)(1) ....	To authorize the manufacture, marking, sale and use of pre pressurized diaphragm expansion vessels for the transportation of compressed gas. (modes 1, 2, 3)
14793-N .....	.....	Vestara, Irvine, CA .....	49 CFR 172.102(c)(1) Special provision 36.	To authorize the transportation in commerce of certain waste medicines in packaging that exceed the authorized quantity by motor vehicle. (mode 1)

**EMERGENCY SPECIAL PERMIT GRANTED**

EE 14745-N	.....	Texas Water Treatment Services, Inc., Bridgeport, TX.	49 CFR 172.101, Column (7), special provision B2.	To authorize the transportation in commerce of certain MC-306 cargo tank motor vehicles constructed of 316 stainless steel for the transportation of Sodium hydroxide. (mode 1)
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S.P No.	S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
<b>DENIED</b>				
8006-M .....	Request by JA-RU, Inc., Jacksonville, FL, February 25, 2009. To modify the special permit to authorize the transportation in commerce of certain toy caps by JaRu customers between their distribution centers and their retail stores without meeting the marking and packaging requirements.			
14742-N .....	Request by Strong Environmental, Inc., Norcross, GA, October 01, 2008. To authorize the manufacture, marking, sale and use of a UN standard 4G fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.12(b).			
14774-N .....	Request by Mercury Marine, Fond du Lac, WI, January 13, 2009. To authorize the transportation in commerce of internal combustion engines that contain small amounts of hazardous materials residue by cargo vessel.			
14730-N .....	Request by ITW Military Products, Waterbury, CT, August 12, 2008.			
11827-M .....	.....	NRS Logistics, White Plains, NY.	49 CFR 180.605(c)(1); 180.352(b)(3).	To modify the special permit to authorize rail cargo as an approved transportation.
14729-N .....	.....	Veolia ES Technical Solutions, L.L.C., Flanners, NJ.	49 CFR 172.102(c) Special Provision 36.	To authorize the transportation in commerce of certain waste medicines in packagings that exceed the maximum authorized net quantity as required by Special Provision 36 when transported by motor vehicle. (mode 1)
14738-N .....	.....	Bridgeview Aerosol, LLC, Bridgeview, IL.	49 CFR 171.8 .....	To authorize the transportation in commerce of pure compressed gas as an 'aerosol.' (mode 1)
14775-N .....	.....	Source Production & Equipment Co., Inc., St. Rose, LA.	49 CFR 173.416 .....	To authorize the continued transportation in commerce of one 20WC packaging containing radioactive material after October 1, 2008. (mode 1)
14804-N .....	.....	Cordstrap USA, Inc., Racine, WI.	49 CFR 174.55(a) .....	To authorize the use of a corded polyester lashing securement system for blocking and bracing hazardous materials transported by rail. (mode 2)
EE 14783-N	.....	New York State Department of Environmental Conservation, Albany, NY.	49 CFR 173.240, 173.241.	To authorize the transportation in commerce of PCB capacitors in non-DOT specification bulk containers. (mode 1)

[FR Doc. E9-5005 Filed 3-12-09; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35219]

#### Union Pacific Railroad Company— Petition for Declaratory Order

**AGENCY:** Surface Transportation Board.

**ACTION:** Institution of declaratory order proceeding; request for comments.

**SUMMARY:** In response to a petition filed by Union Pacific Railroad Company (UP) on February 18, 2009, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e).<sup>1</sup> UP requests that the Board determine the extent of the common carrier obligation to quote rates for new, lengthy movements of chlorine, a toxic inhalation hazard (TIH), where the transportation would require movement through High Threat Urban Areas (HTUAs)<sup>2</sup> and other large communities to destinations where,

according to UP, an ample supply of chlorine is available from nearby sources. The Board seeks public comment on this matter.

**DATES:** Replies to UP's petition and comments are due by March 31, 2009. UP's rebuttal and reply to comments are due by April 20, 2009.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies, referring to STB Finance Docket No. 35219, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, send one copy of comments to UP's representative, Tonya W. Conley, Union Pacific Railroad Company, 1400 Douglas Street, Omaha, NE 68179.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

**FOR FURTHER INFORMATION CONTACT:** Timothy Strafford, (202) 245-0356. [Assistance for the hearing impaired is available through the Federal

Information Relay Service (FIRS) at: 1-800-877-8339].

**SUPPLEMENTARY INFORMATION:** UP, as a rail common carrier, has an obligation under 49 U.S.C. 11101(b) to provide common carrier rates and other service terms upon reasonable request. UP's petition for declaratory order seeks to address a recent request from a customer for common carriage rates for the transportation of chlorine from Utah to destinations in or near Houston and Dallas, TX, and Allemania and Plaquemine, LA. These movements would average 1,900 miles in distance and travel through two HTUAs and several other large cities. UP declined to quote rates for these movements, pending the outcome of this proceeding, because, according to UP, the risk of potential exposure from long distance shipments of chlorine is unnecessary where all four of these destinations are located less than 300 miles from ample alternate chlorine supplies. UP asserts that the facilities in both Allemania and Plaquemine have alternate chlorine sources accessible by rail within 70 miles, none of which will route through any HTUAs, and that the facilities in Houston and Dallas have alternative chlorine sources within 300 miles, with potential sources located in the Houston metropolitan area. UP also asserts that other governmental agencies have

<sup>1</sup> By a separate decision served on March 10, 2009, the Board issued a protective order in this proceeding.

<sup>2</sup> As UP refers to them, HTUAs are defined by the Transportation Security Administration (TSA) at 49 CFR 1580.3.

requested that it find ways to reduce TIH shipments in order to reduce TIH transportation risks.

On July 22, 2008, the Board held a public hearing in STB Ex Parte 677 (Sub-No. 1) to examine issues related to the common carrier obligation of railroads with respect to the transportation of hazardous materials. Comments were filed in that proceeding by the railroads (including UP) and TIH shippers. Many of the comments touched on the issues that are likely to arise in this proceeding. Thus, the parties that participated in STB Ex Parte 677 (Sub-No. 1) may have an interest in the issues raised in this proceeding.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this proceeding to invite broad public comment. Any person seeking to comment on UP's petition may submit written comments to the Board regarding the extent of UP's common carrier obligation to quote rates for new, lengthy movements of chlorine, where the transportation would require movement through HTUAs and other large communities to destinations where an ample supply of chlorine may be available from nearby sources.

In its petition, UP urges the Board to consult with TSA and the Federal Railroad Administration (FRA) because UP suggests that a decision by the Board in this proceeding could conflict with TSA and FRA policies. Because the Board's consideration of the issues raised by UP's petition may relate to statutes and regulations governed by TSA, FRA, and other agencies, any agency with an interest in the outcome of these issues is encouraged to comment.

Board decisions, notices, and filings in this and other Board proceedings are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9-5456 Filed 3-12-09; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35224]

#### **Elgin, Joliet & Eastern Railway Company—Intra-Corporate Family Lease Exemption—Illinois Central Railroad Company**

Elgin, Joliet & Eastern Railway Company (EJ&E), a Class II rail common carrier, filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for an intra-corporate family lease of a line of railroad of Illinois Central Railroad Company (IC), a Class I rail common carrier, in Will County, IL.<sup>1</sup> Pursuant to the lease agreement entered into by EJ&E and IC, EJ&E will lease from IC a line of rail from milepost 41.0 to milepost 39.43, near Plaines, IL, a distance of approximately 1.57 miles. IC will retain its right to use the line to serve any future industries on the line and to access IC's other rail operations in the Joliet, IL area.

The transaction is scheduled to be consummated on or shortly after March 29, 2009, the effective date of the exemption.

The purpose of the transaction is to allow EJ&E to store and spot railroad cars delivered to a local power company and thereby increase operating efficiency.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). EJ&E states that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance between IC/EJ&E and carriers outside the CN corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not

automatically stay the transaction. Petitions for stay must be filed no later than March 20, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35224, must be filed with the Surface Transportation Board, 395 E Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 4, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9-5129 Filed 3-12-09; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35223]

#### **Illinois Central Railroad Company—Trackage Rights Exemption—Wisconsin Central Ltd.**

Pursuant to a written trackage rights agreement entered into between Illinois Central Railroad Company (IC) and Wisconsin Central Ltd. (WC), IC has agreed to grant non-exclusive overhead and interchange trackage rights to WC over IC's line of railroad between milepost 31.6 at University Park, IL (Stuenkel Road), and milepost 20.1 at Harvey, IL (South Junction), a distance of approximately 11.5 miles (line).<sup>1</sup>

The transaction may be consummated on or after March 28, 2009, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the proposed transaction is to enable WC to handle efficiently overhead and interchange freight movements between University Park and Harvey. Under the trackage rights agreement, WC shall not perform any local freight service on the line. WC does not indicate that the transaction imposes interchange commitments. See 49 CFR 1180.4(g)(4).

As a condition to this exemption, any employees affected by the acquisition of

<sup>1</sup> EJ&E and IC are wholly owned indirect subsidiaries of Canadian National Railway Corporation (CN).

<sup>1</sup> A redacted version of the trackage rights agreement between WC and IC was filed with the notice of exemption. The full version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision.

the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 20, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35223, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Healey, Counsel—Regulatory, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: March 4, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–5123 Filed 3–12–09; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network; Proposed Renewal Without Change; Comment Request; Customer Identification Programs for Various Financial Institutions

**AGENCY:** Financial Crimes Enforcement Network, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent

burden, the Financial Crimes Enforcement Network invites comment on a proposed renewal, without change, to information collections found in regulations requiring futures commission merchants, introducing brokers, banks, savings associations, credit unions, certain non-federally regulated banks, mutual funds, and broker-dealers, to develop and implement customer identification programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments are welcome and must be received on or before May 12, 2009.

**ADDRESSES:** Written comments should be submitted to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: Customer Identification Program Comments. Comments also may be submitted by electronic mail to the following Internet address: [regcomments@fincen.gov](mailto:regcomments@fincen.gov), again with a caption, in the body of the text, “Attention: Customer Identification Program Comments.”

*Inspection of comments.* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call).

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Policy and Programs Division at 800–949–2732 option 6.

#### SUPPLEMENTARY INFORMATION:

*Abstract:* The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.<sup>1</sup>

<sup>1</sup> Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate

Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network.

Section 5318(l) of the Bank Secrecy Act authorizes the Secretary to issue regulations prescribing customer identification programs for financial institutions. The regulations must require that, at a minimum, financial institutions implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person’s identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. The regulations are to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. Regulations implementing section 5318(l) are found at 31 CFR 103.121, 103.122, 103.123, and 103.131.

1. *Title:* Customer identification programs for banks, savings associations, credit unions, and certain non-federally regulated banks. (31 CFR 103.121).

*Office of Management and Budget Control Number:* 1506–0026.

*Abstract:* Banks, savings associations, credit unions, and certain non-federally regulated banks are required to develop and maintain customer identification programs and provide their customers with notice of the programs. (See FR 68, 25090, May 9, 2003).

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for profit institutions and non-profit institutions.

*Burden:* Estimated Number of Respondents 22,060.

*Estimated average annual recordkeeping burden per respondent:* 10 hours.

*Estimated average annual disclosure burden per respondent:* 1 hour

*Estimated Total Annual Respondent Burden:* 242,660 hours.

Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law No. 107–56.

2. *Title:* Customer identification program for broker-dealers (31 CFR 103.122).

*Office of Management and Budget Control Number:* 1506–0034.

*Abstract:* Broker-dealers are required to establish and maintain customer identification programs and provide their customers with notice of the programs. (See FR 68, 25113, May 9, 2003.)

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for profit institutions.

*Burden:* Estimated Number of Respondents 5,448.

*Estimated Average Annual Burden Per Respondent:* The estimated average burden associated with the notice requirement is two minutes per respondent.

*Estimated Number of Hours:* 630,896.

3. *Title:* Customer identification programs for futures commission merchants and introducing brokers (31 CFR 103.123)

*Office of Management and Budget Control Number:* 1506–0022.

*Abstract:* Futures commission merchants and introducing brokers are required to develop and maintain customer identification programs and provide their customers with notice of the programs. (See FR 68, 25149, May 9, 2003.)

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for profit institutions.

*Burden:* Estimated Number of Respondents: 1856.

*Estimated Average Annual Burden Per Respondent:* The estimated average burden associated with the notice requirement is two minutes per respondent.

*Estimated Number of Hours:* 20,471.

4. *Title:* Customer identification programs for mutual funds (31 CFR 103.131).

*Office of Management and Budget Control Number:* 1505–0033.

*Abstract:* Mutual funds are required to establish and maintain customer identification programs and provide their customers with notice of the programs. (See FR 68, 25131, May 9, 2003.)

*Current Action:* There is no change to existing regulations.

*Type of Review:* Extension of a currently approved information collection.

*Affected Public:* Business and other for profit institutions.

*Burden:* Estimated Number of Respondents: 2,296.

*Estimated Average Annual Burden Per Respondent:* The estimated average burden associated with the notice requirement is 2 minutes per respondent.

*Estimated Number of Hours:* 266,700.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: March 9, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–5528 Filed 3–12–09; 8:45 am]

BILLING CODE 4810–02–P

#### DEPARTMENT OF THE TREASURY

##### Office of Foreign Assets Control

##### Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the name of Juan Pablo Gutierrez Lozano, whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

**DATES:** The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on February 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

#### SUPPLEMENTARY INFORMATION:

##### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site ([www.treas.gov/ofac](http://www.treas.gov/ofac)) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

##### Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons

determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On February 26, 2009 the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individual listed below, whose property and interests in property were blocked pursuant to the Order.

*The listing of the unblocked individual follows:*

GUTIERREZ LOZANO, Juan Pablo, c/o SERVICIOS SOCIALES LTDA., Barranquilla, Colombia; c/o INVERSIONES GEELE LTDA., Bogota, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o INVERSIONES KANTON LTDA., Cucuta, Norte de

Santander, Colombia; DOB 11 Apr 72; Cedula No. 79570028 (Colombia); Passport 79570028 (Colombia); alt. Passport AC480604 (Colombia) (individual) [SDNT]

Dated: February 26, 2009.

**Barbara C. Hammerle,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. E9-5385 Filed 3-12-09; 8:45 am]

**BILLING CODE 4811-45-P**

## DEPARTMENT OF THE TREASURY

### United States Mint

#### Notification of Pricing for United States Mint 2009 Lincoln Cent Two-Roll Set

**ACTION:** Notification of Pricing for United States Mint 2009 Lincoln Cent Two-Roll Set.

**SUMMARY:** The United States Mint is announcing the price of the 2009 Lincoln Cent Two-Roll Set.

The 2009 Lincoln Cent Two-Roll Set will contain one roll of coins struck at the United States Mint at Philadelphia and one roll of coins struck at the United States Mint at Denver. Four sets will be sold throughout the year, one set for each of the four designs of one-cent coins minted in 2009. Each set will be priced at \$8.95.

The first 2009 Lincoln Cent Two-Roll Set will be offered for sale on March 13, 2009.

**FOR FURTHER INFORMATION CONTACT:** B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW.; Washington, DC 20220; or call 202-354-7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701; Public Law 109-145, Title III (Dec. 22, 2005).

Dated: March 9, 2009.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E9-5503 Filed 3-12-09; 8:45 am]

**BILLING CODE 4810-37-P**





# Federal Register

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**Friday,  
March 13, 2009**

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## **Part II**

## **The President**

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**Notice of March 11, 2009—Continuation  
of the National Emergency With Respect  
To Iran**



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# Presidential Documents

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Title 3—

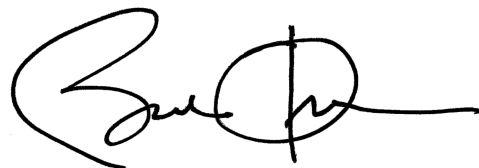
Notice of March 11, 2009

The President

## Continuation of the National Emergency With Respect To Iran

On March 15, 1995, by Executive Order 12957, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran. On May 6, 1995, the President issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Because the actions and policies of the Government of Iran continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of November 2008. This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
March 11, 2009.

# Reader Aids

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Vol. 74, No. 48

Friday, March 13, 2009

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**H.R. 1105/P.L. 111-8**

Omnibus Appropriations Act, 2009 (Mar. 11, 2009; 123 Stat. 524)

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